Funtime, Inc.
1060 N. Aurora Road
Aurora, OH 44202

OCT 29 2001

I. Title of the Application

Application for a Permit for Public Display under the Marine Mammal Protection Act.

Funtime, Inc. d/b/a Six Flags Worlds of Adventure requests authorization to import one adult male killer whale from Mundo Marino, Buenos Aires, Argentina, to its facility in Aurora, Ohio for the purposes of public display.

II. Date of the Application

October 27, 2001

III. Applicant

Funtime, Inc. is a direct subsidiary of Six Flags Theme Parks Inc., a publicly owned corporation. All correspondence regarding the application should be addressed to:

Primary Contact:
G. William Hughes
Zoological Director
1060 N. Aurora Road
Aurora, OH 44202
Phone: (330) 995-2149
Fax: (330) 995-2117
E-Mail: bhughes@sftp.com

Responsible Official:
Joe Costa
Vice President/General Manager
1060 N. Aurora Road
Aurora, OH 44202
Phone: (330) 562-7131, ext. 202
Fax: (330) 562-7020
E-Mail: jcosta@sftp.com

1004-1656

IV. Description of the Marine Mammals and the Proposed Activity

A. Statement of Work

Funtime, Inc. is requesting authorization to import one adult male killer whale (Orcinus orca) for public display.
This animal will enhance the North American cooperative breeding program for killer whales. The addition of this animal will provide additional genetic diversity to the successful breeding program of killer whales in North American. This animal will also be a major part of Funtime, Inc. education programs for the general public. Funtime, Inc. educational programs are open to all age groups of the general public during the summer months. Educational programs for schools, scouts, and community organizations are also offered during the school year. During the summer months over two million visitors will have the opportunity to view educational and entertaining presentations involving killer whales. The information in these presentations will also include information on protecting the marine environment.

B. Summary of Marine Mammals to be Taken, Imported, or Exported

1. One killer whale (Orcinus orca)

2. This import request does not include marine mammal parts.

3. This permit is for the importation of an animal currently held at another zoological facility and will not involve, affect or take marine mammals from the wild.

C. Description of the Proposed Activity

1. Funtime, Inc. requests authorization to import one adult male killer whale, which has been maintained in a zoological environment since November of 1992 at Mundo Marino. The killer whale will be imported from Mundo Marino, Av. Decima n 157 – San Clemente del Tuyu, Buenos Aires, Argentina, to Funtime, Inc., 1060 North Aurora Rd, Aurora, Ohio. The port of entry will be Cleveland, Ohio, USA.

2. Funtime, Inc. requests authorization to import this animal as soon as possible. Funtime, Inc. requests that the import permit be valid until the importation is complete.

3. The animal to be imported is an adult male killer whale approximately 10 years old, weight 7,000 lbs., and 20 feet in length. This animal is identified by the name Kshamenk.

D. If Marine Mammals are to be Collected from the Wild

N/A

E. Taking of Marine Mammal Parts

N/A

F. Effects of the Proposed Activity

The importation of this animal for public display will, pursuant to the Marine Mammal Protection Act, help educate the general public on the concerns relating to marine mammals and the marine environment. In addition this animal will be available to participate in the North American cooperative breeding program for killer whales. With the limited number of animals in the breeding program, this animal will add important genetic diversity to the population. This animal is currently housed in a zoological environment, and the importation will not affect wild stock or the marine ecosystem.

V. Import Requirements

A. The animal will be transported under the direct supervision of Funtime, Inc. professional staff with extensive experience in the transport, medical care and management of killer whales. The names of some of the individuals are listed below.

G. William Hughes
Zoological Director
21 years of experience with marine mammals, including killer whales

Allen Kelley
Curator of Animal Training
25 years of experience with marine mammals, including killer whales

Laura Collins
Curator of Mammals and Birds
16 years of experience with marine mammals, including killer whales

Tobi Pledger, D.V.M.
Staff Veterinarian
7 years of experience with marine mammals, including killer whales

Laurie Gage, D.V.M.
Contract Veterinarian
21 years of experience with marine mammals, including killer whales

Eric Albers
Supervisor of Mammals
15 years of experience with marine mammals, including killer whales

Drew Delgross
Supervisor of Animal Training
15 years of experience with marine mammals, including killer whales

These individuals may be assisted be additional qualified Six Flags personnel.

B The killer whale will be transported in a specially designed and constructed transport unit from Mundo Marino, Buenos Aires, Argentina to Funtime, Inc., Aurora, Ohio. The transport unit is a waterproof box that measures 22 feet in length, 8 feet wide and 6 feet in height. A description of the transport unit is attached as Appendix A.

C. The transport will be via charter aircraft and truck, in accordance with professionally accepted techniques, as described in the 22nd edition of the International Air Transport Associations' " Live Animal Regulations", and in compliance with all applicable regulations, standards and conditions set forth under the Marine Mammal Protection act, Animal Welfare Act and Lacey Act. The transport will comply with APHIS regulations 9 CFR 3.116, Care in transit. The killer whale will remain under the care and supervision of Mundo Marino until the transport commences. Funtime, Inc. will assume responsibility for the care and maintenance of the killer whale when it is placed in the transport unit. The transport is anticipated to take less than 22 hours, absent of unusual circumstances.

D. A written certification from the attending veterinarian is attached as Appendix B.

E. The killer whale will be exported from Buenos Aires, Argentina. This animal was obtained as a stranded animal on November 19, 1992.

F. The animal was taken from the area known as Samborombon Bay, Argentina with authorization from the Argentinean government. The animal was stranded on November 17, 1992 at low tide. Attempts to return the animal to the wild at the time of the stranding were unsuccessful. On November 19, 1992 the animal was rescued and transferred to Mundo Marino, Buenos Aires, Argentina. The animal was 4.26 m in length and approximately one year of age. The animal was suffering from dehydration and sunburn. After lengthy medical treatments, by government technicians, the killer whale was placed with a zoological institution (Mundo Marino) by the Argentinean government.

G. Mundo Marino is in compliance with Argentinean government rules and regulations as evidenced by the attached document. (Appendix C)

H. The importation of this killer whale will not result in the collection of a killer whale from the wild.

I. N/A

VI. Export Requirements

N/A

VII. General Requirements for Public Display

A. The facility to house the imported killer whale will be:

Funtime, Inc. d/b/a Six Flags Worlds of Adventure
1060 North Aurora Road
Aurora, OH 44202 USA

The operating hours and admission fees are explained on the attached brochures.

B. Funtime, Inc. is a licensed CLASS C EXIBITOR under the Animal Welfare Act (7 U.S.C. 2131 et seq.)
Certificate No. 31-C-0137 (copy attached)

C Education, conservation and research are critical components of the Funtime, Inc. mission. These elements will provide an important link to the future of wildlife around the world.

Funtime, Inc. is an American Zoo and Aquarium Association (AZA) accredited institution as well as a member of the Alliance of Marine Mammal Parks and Aquariums (AMMPA). The facility has been a member of the AZA since 1980, and a member of AMMPA for 9 years. Funtime, Inc. education programs were developed and are operated in accordance with the professionally recognized standards that have been established by these organizations. These standards have been published by the agency in the Federal Register. (Education brochures attached)

Based on its commitment to education, Funtime, Inc. professional educators provide students with the opportunity to expand and enhance their knowledge and understanding of wildlife and the natural environment. The state science curriculum is utilized to evaluate the education programs, which are developed to compliment the academic requirements. Funtime, Inc. provides education programs throughout the year for all age groups. This is accomplished through a variety of media, including live animal exhibits, presentations, demonstrations, graphic displays, and narrated tours through the facility.

At the Funtime, Inc. facility, over two million visitors per year are exposed to a variety of marine mammals, birds and fish in a fascinating and educational manner.

Funtime, Inc. offers Outreach Programs (School Assembly Programs) for grades K-12. These programs are either ½ day or all day programs. Funtime, Inc. staff visits schools within Ohio and all the surrounding states. Funtime, Inc. instructors present programs using slides, videos, biological artifacts, songs, "dress up" costume and life size inflatable animals. These programs give students an opportunity to explore the marine environment from their classroom.

Funtime, Inc. offers Instructional Field Trips at the facility for school classes and other groups such as Boy Scouts and Girl Scouts. These programs are designed to be offered to students K-12, gifted, and college level.

During the summer months Funtime Inc. offers educational classes for all age groups and also conducts family classes. These classes vary from 1 to 5 days in length. They include sleepovers and

training classes that help the students better understand the marine ecosystem.

In the local community, Funtime, Inc. offers complimentary educational programs at schools or at the facility. Funtime, Inc. has developed a program for a local school district, which has become a part of their yearly curriculum.

For each school that participates in any of the educational programs offered, a teacher's guide is provided for the specific grade level. These materials help the teachers prepare the students for the presentations on natural history of the animals, the principles of ecology, adaptations and behavior as well as other conservation issues.

Working with Ashland University, Funtime, Inc. will be offering teacher training workshops and seminars that will provide professional enrichment, and college credit.

Conservation/Research

Over the years, this facility has been involved in many conservation and research projects. Funtime, Inc. is committed to conservation efforts concerning wildlife and the environment. This facility has been a state and federal licensed facility for wildlife rehabilitation since 1996. Working in conjunction with state and federal agencies as well as a variety of state and national rehabilitation facilities, the staff has provided care to over 600 animals. Wildlife rehabilitation, including efforts involving local wildlife and endangered species, is conducted throughout the year. This facility has successfully rehabilitated and released sixty percent of the animals it received this past year. This service provides the general public with an opportunity help wildlife in their own back yard. Funtime, Inc. has also been involved in long-term care and release of marine mammals from the northeast stranding network. In prior years, the facility has rehabilitated, tagged and released two hooded seals in conjunction with the New England Aquarium and the National Aquarium in Baltimore.

Other projects that the staff has been involved with include: studies on freshwater mussels, local stream restoration and endangered animal surveys in the Cuyahoga Valley. Members of the Funtime, Inc. staff participated in the Coral Reef survey in Belize, Central America, while continuing to develop a self sustaining population of corals at our facility. Endangered African Cichlids (currently extinct in the wild) are being maintained at the facility with the

possibility of reintroducing this species to their natural habitat. The park has been involved with the U.S. Fish and Wildlife Services on the Spectacled Eider Recovery Program (threatened species) since 1992.

Research provides Funtime, Inc. with opportunities to advance the science of animal care, breeding and population management of animals in a zoological setting as well as in their natural environment. Projects conducted at the park include artificial diet studies with marine mammals, baseline blood parameters on penguins, signature whistles in bottlenose dolphins, growth rate studies on sand tiger sharks and various drug level studies on sharks and penguins.

Research efforts conducted in the field and in zoological institutions are necessary for a full understanding on the biology of any species. This data is important and necessary for the use in conservation efforts.

VIII. Previous Permits

No previous permits have been issued.

IX. Certification and Signature

"I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under one or more of the following statutes and the regulations promulgated thereunder, as indicated in section I. of this application:

The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) and regulations (50 CRF Part 216).

I also understand that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties provided under the Marine Mammal Protection Act of 1972."

G. William Hughes
Zoological Director
Six Flags Worlds of Adventure

10/27/2001
Date

APPENDIX A

The transport of the killer whale will be conducted via charter aircraft and truck in accordance with professionally accepted techniques and in compliance with all applicable regulations, standards, and conditions set forth under the Marine Mammal Protection Act, the Animal Welfare Act and the Lacey Act. The transport will comply with APHIS regulations 9 CFR 3.116 Care in transit. The transport is anticipated to take less than 22 hours, absent unusual circumstances. The professional staff has reviewed all transport procedures. An appropriate transport plan will be developed and maintained on file at the park.

Killer whales of this size have been successfully transported since 1965. The staff working on the transport has many years of experience transporting killer whales, as all are former SeaWorld personal. Killer whales have been transported in and out of this facility almost every year since 1972 without incident.

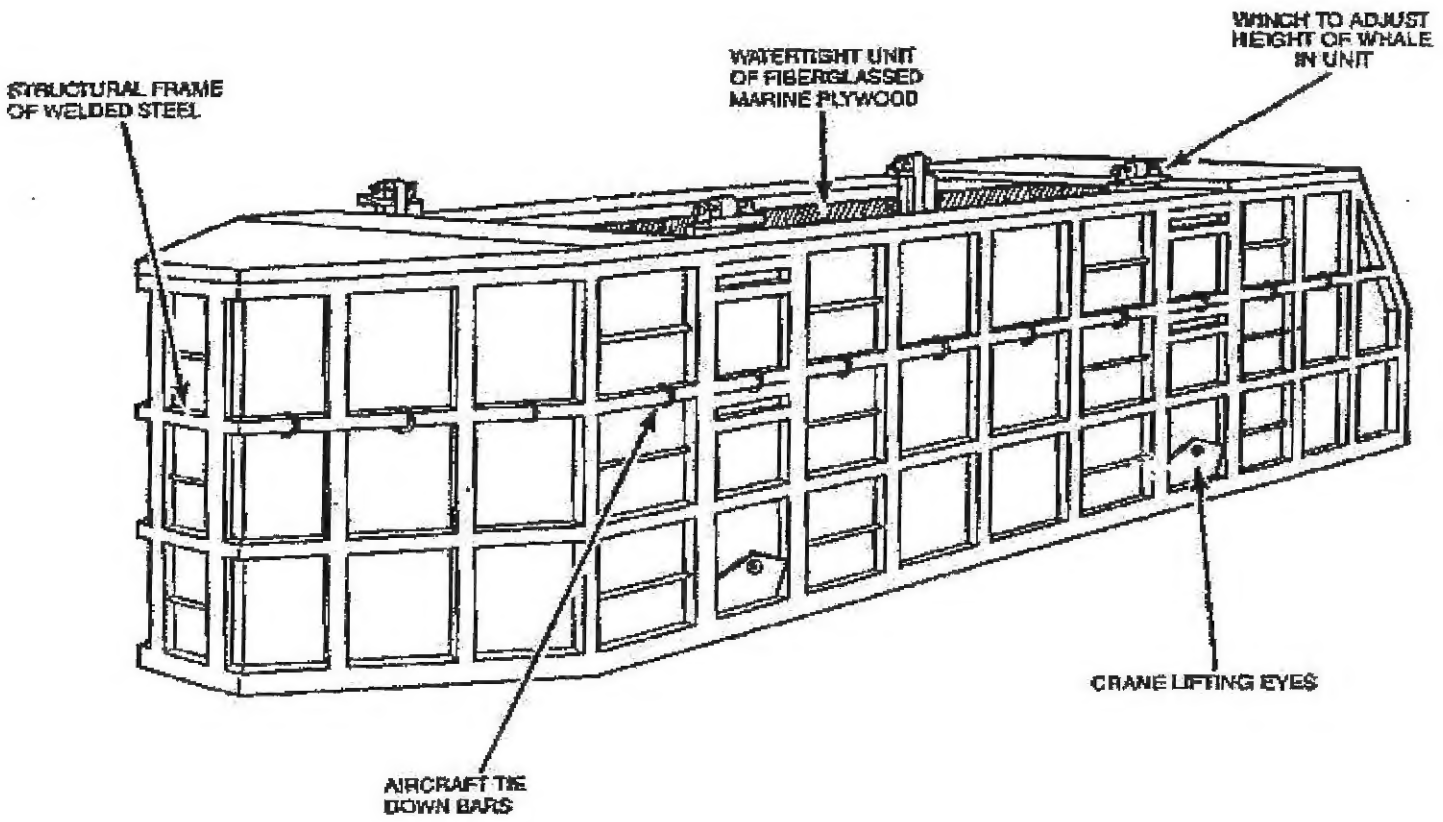
A veterinarian will accompany the animal at all times during the transport and the animal will be under the direct supervision of the Funtime, Inc. professional staff. During the transport the staff will monitor the water temperature, the animal's positioning, respiration and will have food available for the animal during transport. Attached is an illustration of the transport unit.

Reference -- CRC Handbook of Marine Mammal Medicine: Second Edition: edited by Leslie A. Dierauf and Frances M.D. Guland: CRC Press LLC: 2001

Reference: -- Live Animals regulations, 22nd Edition, International Air Transport Association: 1995 (page 215-216)

APPENDIX A

KILLER WHALE TRANSPORT UNIT



39

Marine Mammal Transport

Jim Antrim and James F. McBain

Introduction

During the last 30 years, specialized marine mammal transport techniques and equipment have been developed to cope with the unique physiology of marine mammals. Therefore, safe, successful transportation is possible with the proper attention to detail and the use of technology appropriate to the type of marine mammal being transported.

In moving marine mammals, one must always be aware of, and comply with, local, state/provincial, federal, and international laws and regulations or mandates regarding transportation. Since constant monitoring is necessary for the early detection and correction of respiratory, thermoregulatory, postural, and behavioral abnormalities, U.S. law mandates that a qualified attendant be present when transporting cetaceans, pinnipeds, sirenians, and sea otters (Department of Agriculture, 1999).

Regulations

Two published regulatory documents deal with the transport of marine mammals and should be consulted as appropriate. The first of these is applicable only to individuals transporting marine mammals under the jurisdiction of the United States. This document is commonly known as "The Animal Welfare Act—Specifications for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals" (Department of Agriculture, 1999) (see Chapter 33, Legislation). The portion of this document covering marine mammal transportation standards includes specifications for consignments to carriers and intermediate handlers, primary enclosures used to transport marine mammals, primary conveyances, food and water requirements, care in transit, terminal facilities, and methods of handling. Enforcement of this regulation is the responsibility of the U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS). The second document is "Live Animals Regulations," published by the International Air Transport Association (IATA), and accepted by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (Convention Resolution 4.20) and the Office International des Epizooties (OIE) as guidelines for transporting animals by air (International Air Transport Association, 1999). The European Economic Community, as well as many other countries, governmental entities, and airlines, have adopted these regulations as laws, policies, or minimum standards for transporting live animals in containers, pens, and stalls.

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History of Marine Mammal Transport

The overland transport of cetaceans has been documented at least as far back as 1554, when Rondelet, governing physician of the University of Medicine at Montpellier, France, recorded the regular transportation of live dolphins 130 miles inland by fishermen. These animals were shipped for the purpose of human consumption and were kept alive during transit to arrive at the market unspoiled (Rondelet, 1554).

In about 1861, P.T. Barnum reported the transport of six belugas or white whales (*Delphinapterus leucas*) from the St. Lawrence River to New York in a box on a bed of seaweed. Only one of these animals survived the transport and was exhibited for 2 years with a bottlenose dolphin (*Tursiops truncatus*) at Barnum's Museum (Wyman, 1863).

In 1877, a beluga, collected in Labrador, was shipped by sailing vessel to Montreal, then by train to New York, with a total of 14 days travel time. The animal was subsequently placed on a bed of seaweed for the 10-day steamship voyage to England, where it survived only 4 days after arrival. In the following year, the same route was used to transport four belugas. Three of these animals survived the trip (Lee, 1878).

Another early documented cetacean transport occurred in the 1870s when two belugas were sent from Labrador to the Brighton Aquarium in England in the flooded hold of a ship. Unfortunately, both animals died during the transport (Slijper, 1979). More closely approximating current transport methods, the New York Aquarium transported a group of bottlenose dolphins within water-filled boxes in 1907. About 5 years later, Taylor first employed a soft stretcher for marine mammal transportation (Townsend, 1914).

Early transport of killer whales (*Orcinus orca*) occurred much later and somewhat differently, due to the size of the animals involved. In June 1965, a floating pen pulled by a boat, measuring $18 \times 12 \times 5$ m ($59 \times 40 \times 16$ ft), was used to transport an adult killer whale from Namu, British Columbia, to Seattle, Washington. The journey took 2 weeks and the animal traveled a distance of 675 km (422 miles) (Newman and McGreer, 1966). In December 1965, a female killer whale was transported by air in a box from Seattle, Washington, to SeaWorld, Inc. in San Diego, California. The animal was transported easily, and quickly acclimated to the zoological environment.

Cetaceans

Cetaceans spend their entire lives in water, which provides uniform support by equal distribution of pressure over the entire body (Ridgway, 1972). The result is near-weightlessness, allowing normal respiration. Additionally, water rapidly dissipates cetacean metabolic heat at 25 times the rate of air (Ridgway, 1972). As a result, when removed from their free-swimming state, the primary criteria that must be met to transport cetaceans successfully are adequate body support for their comfort and normal respiration, and a temperature control mechanism to assist with thermoregulation (see Figures 1 and 2).

Body support techniques have been developed to allow normal breathing during transport. Cetaceans are now moved in fabric stretchers and suspended in water-filled transport units, closely approximating the near-weightlessness of water. Also, the widespread use of aircraft for long-distance travel has shortened the amount of time cetaceans are removed from a free-swimming water environment (Cornell, 1978).

Temperature control is of paramount importance. Since most of a cetacean's body is enclosed within a layer of thick, insulating blubber, thermoregulation in the water is controlled through constriction or dilation of the peripheral vessels in the heavily vascularized pectoral flippers, tail flukes, and dorsal fin (Slijper, 1979). Consequently, cetaceans are less able to dissipate excess

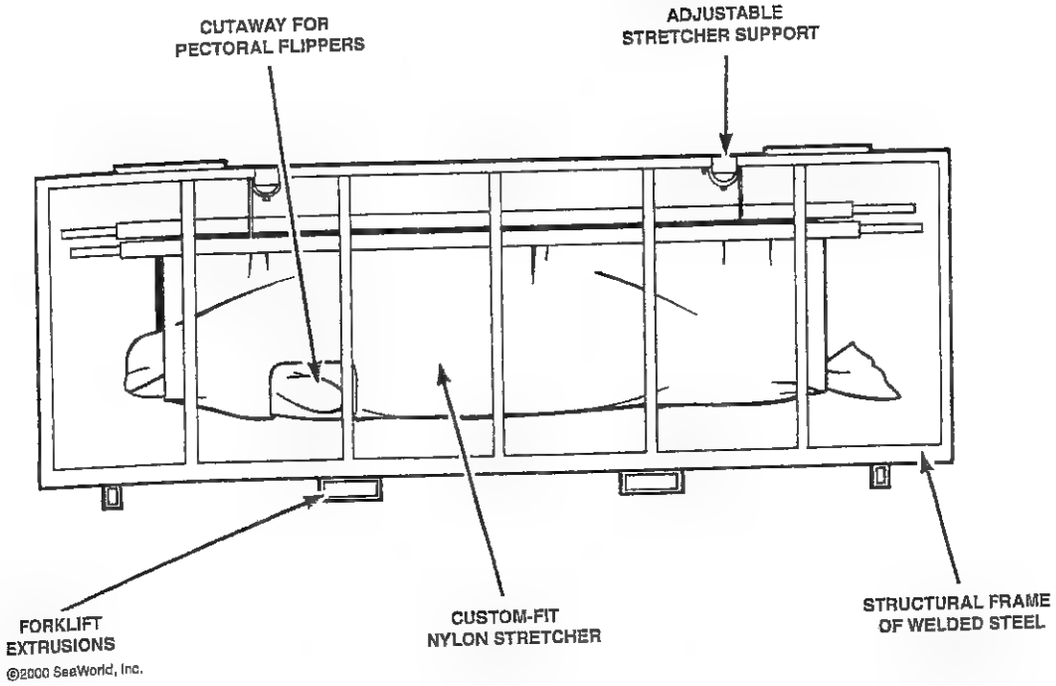


FIGURE 1 Beluga (*Delphinapterus leucas*) transport unit, side cutaway view. (Image courtesy of SeaWorld.)

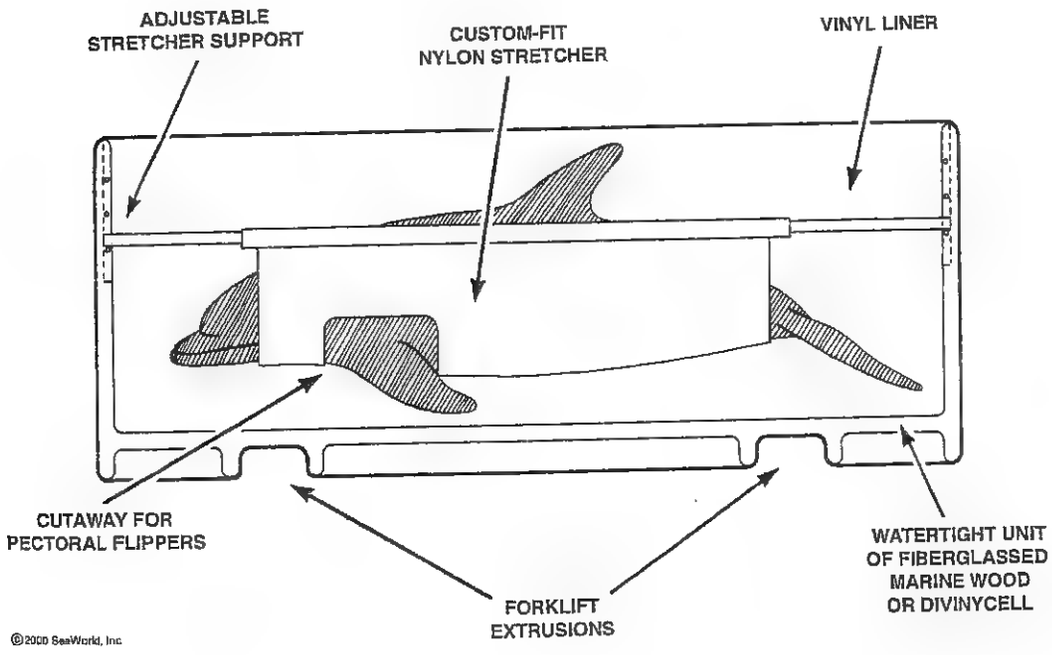


FIGURE 2 Bottlenose dolphin transport (*Tursiops truncatus*) unit, side cutaway view. (Image courtesy of SeaWorld.)

heat when removed from the water, due to the lower thermal conductivity of air. Thermoregulatory assistance can be provided in several ways. Suspending the cetacean within a water-filled container will allow water temperature adjustments according to the animal's needs. In an aircraft or enclosed-truck transport, the interior temperature may also be adjusted. It is best to conduct overland cetacean transports in open trucks at night or on overcast days to prevent sunburn. If this is not possible, light, moistened towels may be placed over the cetacean's skin to prevent sunburn and desiccation.

In early years, much of the difficulty in transporting cetaceans was due to equipment failures. Most failures can be avoided through proper planning and thorough preparation. Therefore, based on the possibility of problems, there must always be contingency plans to ensure the welfare of the animals being transported. Such plans require adequate personnel and equipment, either to return cetaceans to holding facilities if the transport is aborted, or to care for the animals if a delay occurs at an unexpected location. Certainly, the transport should be canceled if there are no contingency plans prepared to manage significant delays.

Animal health problems resulting from early, unsophisticated cetacean transports included muscular stiffness upon return to water, depression of appetite, anemia as a result of abrasions, pressure necrosis, and respiratory infections. Because of the improved transport techniques used today, which provide appropriate water temperatures and allow for lateral and vertical flexion, muscular stiffness can be minimized, and usually disappears within a few hours to a few days, or is avoided entirely. Now, properly transported cetaceans resume feeding immediately upon removal from their transport units, especially animals that have experienced transport previously. Abrasions and pressure necrosis are avoided through the use of fitted stretchers, nonabrasive materials, and proper positioning within the stretcher and transport unit. The utilization of modern rapid transport has decreased or eliminated the previously common use of antibiotics and corticosteroids for the prevention and treatment of transport-related respiratory infections. Proper support equipment, well-trained, experienced personnel, and strict attention to logistical details are important factors influencing the success of any cetacean transport.

A thorough assessment of the health status of the cetacean must be made prior to transport. Such an assessment should include behavioral observations, a physical examination, hematological examination, and, if possible, urinalysis. Cetaceans are generally not fed for 24 hours prior to shipment to minimize the volume of body wastes discharged into the transport container. Fasting may also reduce the incidence of regurgitation during transit.

The initial step in cetacean transport is lifting the whale or dolphin from its pool or holding facility in a custom-fitted stretcher made of soft material, generally nylon or canvas. These stretchers may be lined with wool or chamois, if desired, to minimize the possibility of abrasion. Stretchers must be constructed according to accurate measurements of the body of the individual cetacean to ensure proper fit and provide equal distribution of body weight along the stretcher. Paired openings in the stretcher allow the pectoral flippers to extend in an unrestricted, natural position (Ridgway, 1972; Cornell, 1978). The animal is positioned in the stretcher so that pressure is not increased on specific points along the body or flippers, which might lead to pressure necrosis or abrasion. During loading, every effort must be made to avoid abrading the highly vascularized skin of the cetacean. The danger of pressure necrosis is greatest in the axillary region (region just posterior to the insertion of the pectoral flippers). Metal poles supporting the stretcher must be sturdy enough to support the weight of the cetacean, even if the weight suddenly shifts. The pole ends should be rounded or covered with caps to eliminate sharp edges. Rope, nylon webbing, chain, or vinyl-covered steel cable may be used to connect the stretcher poles to the lifting crane. Eyebolts on the stretcher poles where the lifting tackle is attached should be padded to prevent lacerations and abrasions to both cetaceans and personnel. When engaged through the eyebolts, lifting hooks must face away from the animal. Body surfaces likely

be exposed to the drying effects of air may be covered with a protective ointment or kept wet spraying or dousing with water to prevent desiccation (Cornell, 1978).

A crane is required to lift most cetaceans safely because of their weight and the possibility that ey may move while being lifted. Therefore, the crane's lifting capacity must be equal to the ıimal's weight plus an acceptable safety factor. At the location of the cetacean lift, the supporting ırface should be inspected and all details of the lift must be discussed with the crane operator. ydraulic cranes are preferred over mechanical cranes because they operate more smoothly. or safety, a cetacean must be kept as low to the ground as practical during all phases of the ft. Tags and/or guidelines must be attached to the stretcher, not to the eyebolts, where they ıight bind with lifting tackle. When lifting small cetaceans (<400 kg; <880 lb) two tags or uidelines should be used. These should be attached to the stretcher poles on opposite ends. or large animals (>400 kg), four lines should be used, two at each end attached directly to ıe stretcher poles. Guidelines should be attended during all phases of the lift to control ınwanted motion.

Once fitted into its custom stretcher, the cetacean is lowered into a watertight transport unit ıf appropriate size, allowing the animal clearance from the ends, sides, and bottom of the ransport unit. Transporters currently in use at Sea World are constructed of fiberglass-covered oam, or polyvinyl chloride sheet stock (Divinycell®, DIAB, Inc., DeSoto, TX, and DIAB nternational, Laholm, Sweden), or marine plywood. Some of these transport units are rein-orced and protected by a steel frame. A removable lining of vinyl is installed on the inside walls of the transport unit to prevent abrasions. Lids or baffles are secured over both ends of he unit to reduce the possibility of water spillage. A stretcher support system may be incor-porated into transport units to enable attendants to adjust the position of the animal easily by raising or lowering the stretcher poles during loading or transport (Figures 3 and 4).

Once positioned within the transport unit, sufficient fresh water is added to submerge the lower 2/3 to 3/4 of the animal's body. It is recommended that salt water not be used, because of potential damage to aircraft components if spillage occurs. Suspension in water provides cooling and buoyancy, permitting exertion-free respiration throughout transport. If transported in an adequately supported posture, there should be little or no detectable variation in respiratory rhythm during transport (Lilly, 1961; Cornell, 1978). The temper-ature of the water in the transport unit should be the same or close to the temperature to which the cetacean is habituated. If the cetacean is being moved from water of one temper-ature to a different temperature, it is best to have the water in the transport unit at a temperature between the two. If the ambient air temperature is significantly warmer than the temperature of the water in the transport unit, ice may be added to maintain the appropriate water temperature.

For ground transport, the planned route of travel must be examined ahead of time with attention to road conditions, such as overhead clearances (i.e., trees, electrical wires, low bridges), as well as any special limitations on weight or size. If the load is excessively heavy or overly wide, special permits may be required and must be obtained in advance of transport. A whale transport unit is usually carried on the back of a flatbed or lowboy trailer pulled by a diesel tractor. It is best if the tractor is equipped in a manner that the exhaust is directed toward the road surface to minimize exposure of the animals and human attendants. A spare tractor should accompany the transport caravan as assurance against delays due to tractor malfunction.

Attendants accompanying the cetacean transport unit must be briefed prior to transport concerning all aspects of safety. A special permit allowing attendants to ride on the back of trucks may be required in some areas. Escort vehicles may precede and follow the caravan, and communications between all vehicles in the convoy can be maintained using radios or cellular phones. In many areas, notifying the appropriate authorities (i.e., police, highway patrol) of the

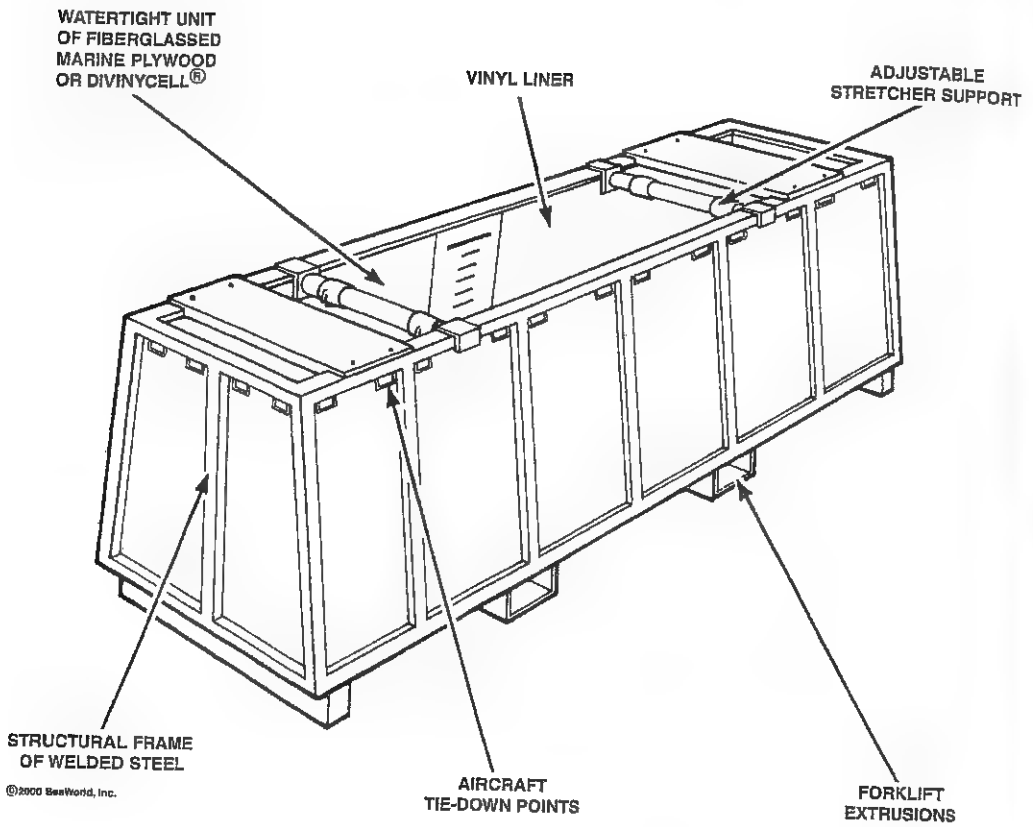


FIGURE 3 Beluga transport unit. (Image courtesy of SeaWorld.)

planned move and route will aid ground transport and may eliminate traffic delays. An on-the-ground logistical team formed prior to transport can help coordinate communications among involved staff (i.e., husbandry, administration, media interest) at the time of transport itself.

Most recent long-distance cetacean transports have involved the use of aircraft. Large cargo aircraft are preferred because of the size and weight of the cetaceans and their transport units. However, a major problem encountered over the years has been the relatively small size of many aircraft cargo doors. It is essential prior to transport to confirm that the transport unit and associated equipment will fit easily through the cargo door of the transport aircraft. Accurate weights on the animal transport units and other support equipment must also be obtained, so the aircraft can be balanced properly. Additionally, the aircraft needs to have provisions to secure the load safely to prevent shifting during flight. If, in transporting marine mammals, one uses a local airport regularly, it may be of help to brief airport and air carrier service personnel periodically, either in person or by written correspondence.

Depending upon the size, weight, and configuration of the transport unit, various types of loading and unloading equipment may be used, including platform loaders, forklift trucks, and cranes. Platform loaders and forklift trucks decrease loading time, but are not always available with adequate lifting capacity and often must be scheduled in advance. Mechanical problems or inclement weather might necessitate landing at an alternative airport rather than the originally scheduled destination. For these reasons, large cetacean transport units should be designed and constructed for lifting by a crane, since one is usually available on short notice. However, crane companies frequently will not have the proper equipment to lift large cetacean transport units safely, making it essential that tackle such as steel cables, spreader bars, and

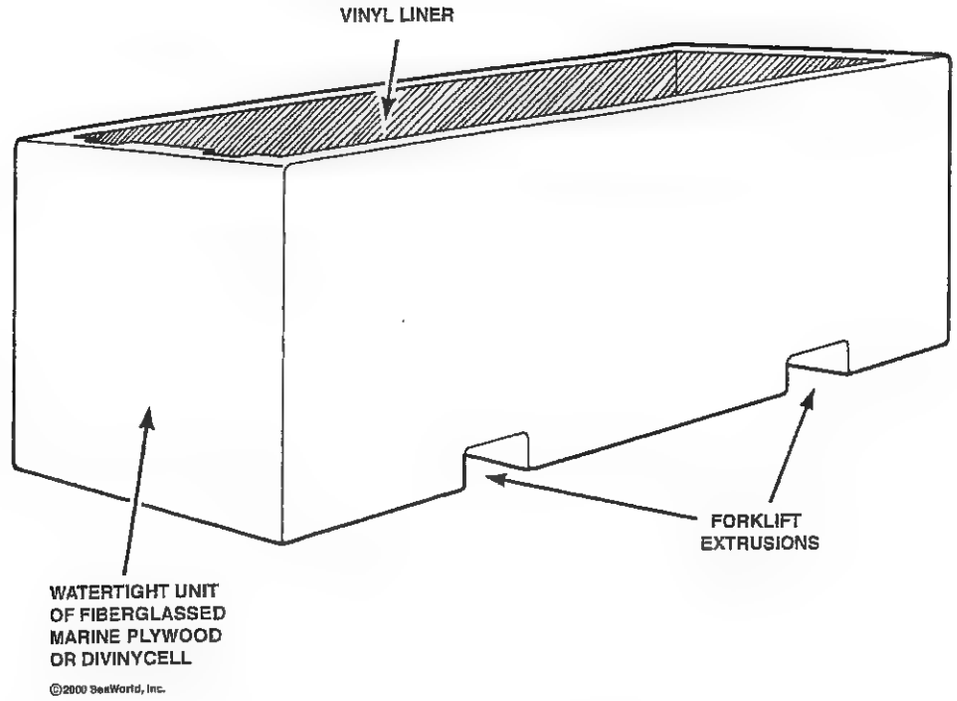


FIGURE 4 Bottlenose dolphin transport unit. (Image courtesy of SeaWorld.)

shackles accompany transport units at all times. Animal care ground personnel should remain at the airport until the transport aircraft takes flight, since occasional mechanical problems have required deplaning or have caused takeoff delays.

Attendants accompanying the cetacean air transport may need to brief the flight crew before takeoff regarding the appropriate angle of takeoff and descent (both of which should be as gradual as possible to avoid spillage from the transport unit), as well as cabin pressure and air temperature. Since cetaceans appear to be susceptible to the effects of high-altitude sickness (acute mountain sickness), it is recommended that the altitude or pressure inside the aircraft be maintained to the equivalent of 1067 m altitude (3520 ft) or less. Keeping the cabin air temperature the same as the temperature of the water in the transport unit will avoid any unwanted temperature loss or gain.

U.S. federal regulations specify most marine mammals be attended during transport, yet do not specify how many attendants are required. It is recommended there be at least one experienced attendant for each transported cetacean. This person should not only be experienced in animal husbandry, but also have emergency medical equipment on-site, and know how to use it, should it become necessary. The experienced attendant will also ensure close attention to each animal's behavior, which can lead to early detection of abnormalities in respiration, posture, and activity level, and thereby provide attendants who can rapidly correct problems. Attendants should have ready access to personal protective equipment (i.e., rain gear, wet suit, waders) to aid in animal repositioning should it be necessary during transport. Attendants can also prevent desiccation of the cetacean's skin and the subsequent development of "hot spots," which later blister and slough, by regularly wetting exposed skin with water.

Appropriate equipment for unloading and ground transport is necessary at the destination airport. Such equipment must be in position at the airport prior to the arrival of the aircraft to avoid delays.

Upon arrival at the final destination, the cetacean is removed from the transport unit while still suspended in its fabric stretcher, lowered into a pool of water, and released. Such pools need not be shallow or small, but plans and equipment should be available in case the transported animal needs assistance, immediately following release or in subsequent days.

Animals must remain under close observation for at least the first 24 hours following transport. Respiratory rates must be monitored and food offered frequently. Follow-up physical examinations and hematological examinations are prudent within the week following transport, or sooner if problems arise.

Pinnipeds

Pinniped transport is less complex than that of cetaceans because pinnipeds live a semiaquatic existence, and are able to tolerate long periods out of water if kept cool and/or moist. Cool air temperatures ranging from 5 to 13°C (41 to 55°F) are suggested if transported by air or enclosed truck, but not mandatory unless the pinnipeds are exhibiting evidence of discomfort or hyperthermia. If ground transport is utilized, provisions for cooling, such as ice and water sprays, are necessary during transport. Ice may be placed within the transport unit, providing a freshwater source and cooling for the animal. As an alternative, ice may be placed on top of transport containers to furnish a cooling drip during transport. As is the case with cetaceans, pinnipeds should be fasted for 24 hours prior to the move, and should not be fed during transport.

Transport containers need to be well ventilated, strong enough to contain the animal(s) being moved, and possess watertight bottoms extending at least 25 cm (10 in.) up the cage sides to prevent spillage of wastes and water. Any wood or metal used for cage construction must be free of sharp edges, splinters, or burrs on the interior surface. The openings in a wire or net mesh must not exceed 5 cm (2 in.) to prevent possible trauma during investigation or attempts to escape (Ridgway, 1972).

Pinnipeds may be transported singly, especially in the case of large or aggressive individuals, or as groups. It is best to avoid overcrowding, as it can lead to overheating. Cage dimensions must be large enough to allow the animal to turn around and exhibit normal posturing during transport. As with cetaceans, the presence of qualified attendants is required by U.S. law and is necessary to note and correct difficulties arising during transport. Depending on the size of the animal, net and gloves should be available if it is necessary to do something to the animal during transport.

Sea Otters

Sea otters, unlike cetaceans and pinnipeds, have a high metabolic rate and need to be fed well-refrigerated food items such as clams and shrimp before and during transport. Due to this high metabolic rate, sea otters are as temperature sensitive during transport as cetaceans, maintaining primary thermoregulation through flipper contact with water. Therefore, a layer of ice must be placed on an elevated, draining cage floor, to serve as a source of fresh water and cooling.

Sea otter transport cages may be constructed of wood, fiberglass, or smooth metal with mesh side panels, allowing good ventilation and unobstructed observation. The use of nylon netting instead of metal mesh for the side panels has minimized dental damage. A perforated floor can be placed above the waste-containing watertight cage bottom allowing uneaten food, feces, and urine to fall through. Cage bottoms should be removable, allowing emptying of waste during transport (Fitz-Gibbon and Hewlett, 1984). Plastic sky kennels are not recommended, because they provide inadequate ventilation, and otters may break teeth on the steel mesh door or

side vents. Furthermore, sky kennels promote fur soiling by forcing the otter to lie in its own waste products. Cage size must be large enough for the otter to turn around and groom freely. The presence of an attendant is required by U.S. law and is as imperative for sea otters as it is for pinnipeds and cetaceans. Thermoregulatory status must be constantly monitored as hyperthermia is the greatest obstacle to successful sea otter transport. Lethargy, panting, and flippers warm to the touch are all signs of overheating in sea otters. If the otters become too warm, spraying with cool water is helpful. It is important to keep a sea otter's fur as clean as possible during transport. Soiled fur can be gently rinsed with a freshwater sprayer.

Sirenians

Transport of sirenians is less complex than that of cetaceans, pinnipeds, or sea otters, because they actually require and are tolerant of warmer temperatures. Transport appears to be best accomplished using a temperature-controlled (18 to 23°C; 64 to 73°F) truck or airplane. Current IATA regulations stipulate both manatees and dugongs be transported in the same manner and using the same containers as cetaceans (International Air Transport Association, 1999).

Manatees are easily transported out of water on soft, closed cell foam in a watertight container constructed of fiber-glassed Divinycell® or marine plywood. These containers should be slightly larger in length and width than the manatee, to enable the animal to make normal postural adjustments. Initially, animals may move around considerably. However, they soon settle down and begin resting comfortably in a ventral, lateral, or dorsal position. During air transport, standard nylon aircraft tie-down straps are used over the open tops of the containers to avoid any vertical movement of the animals that may be caused by air turbulence. Freshwater spray can be applied throughout the transport process to aid in cooling. Manatees do not require feeding during transport because of their slow metabolic rates. Fasting prior to transport produces a negligible change in waste output. Any solid stool passed during transport must be removed in a sanitary manner.

Polar Bears

Transport of polar bears requires metal caging sturdy enough to contain and support the bear safely with a watertight cage floor to catch waste. Polar bears are best transported during cool weather. Aircraft cabin or enclosed trailer temperatures should be maintained below 13°C (55°F) during flight or ground transport. If a segment of the route involves transport outside a refrigerated vehicle, ice must be provided either within or on top of the cage. This ice can also provide a freshwater drinking source in extended transports. Food is not necessary during transport. Upon arrival, it may be a few days before the animal becomes acclimated enough to begin feeding.

Although tooth breakage is a possibility, it is unwise to tranquilize polar bears during transport, because thermoregulatory mechanisms may be compromised. To promote calmness, consider conducting the transport in darkness. Despite the lack of requirement by U.S. law, an attendant can assure the polar bear is maintained at a comfortable temperature and can protect bystanders from unwanted contact.

Additional Medical Considerations

Animals that have never been transported before should be given the opportunity to become familiar with the transport container. This means allowing the animal to enter the container

or a similar unit in a way that allows it to become accustomed to the container prior to transport. In the case of cetaceans, this means arranging to put the animal into a stretcher and loading it into the water-filled transport unit. Allowing the animal to become desensitized to the transport device before the actual event is well worth the investment in time and effort. This makes the process less stressful for the animal, and also allows the transport staff to become aware of the type of behaviors to be expected.

Prior to transport, a decision must be made regarding sedation. If the animal is expected to travel without difficulty, pre-transport sedation is unnecessary. If there is uncertainty, one may administer an oral dose of diazepam (Valium®, Roche Pharmaceuticals, Exton, PA) 30 to 60 min before any transport-related activities are apparent to the animal (see Chapter 29, Anesthesia, and Chapter 31, Pharmaceuticals). In the case of cetaceans, this means before the pool water is lowered or before the animals become aware of any other unusual activity or atypical accumulation of people. In spite of the fasting recommendations, the oral administration of diazepam does not seem to produce any problems. In manatees, pre-transport administration of sedation would most likely be given by intramuscular injection. If during the transport, the animal's activity is deemed to be potentially threatening to its health, appropriate sedation should be administered. Diazepam or midazolam (Versed®, Roche Pharmaceuticals, Exton, PA) alone, or in combination with meperidine/pethidine (Demerol®, Sanofi Winthrop Pharmaceuticals, Overland Park, KS), has been the most widely used for transport sedation. Dosages are discussed in Chapters 29 (Anesthesia) and 31 (Pharmaceuticals).

During a transport, the availability of refrigerated food fish may be helpful for the administration of oral medication. Offering fish can also provide a useful diversion for an animal upset by transport activities. As mentioned previously, the use of vinyl liners in cetacean transport units will minimize the possibility of skin abrasions. This is very important because most cetaceans demonstrate prolonged bleeding times from external wounds when in fresh water. In the event that an abrasion is hemorrhaging, ferric subsulfate (14% iron) (Medical Chemical Corporation, Torrance, CA; or Kwik-Stop, Arc Laboratories, Atlanta, GA) applied topically is usually effective. Yunnan Paiyao® (Yunnan Paiyao Factory), a Chinese herbal medication, applied topically or given orally, also appears to be useful for decreasing bleeding time.

Occasionally during air transport of cetaceans, dramatic elevation of respiratory rate will occur. The causes for this can range from life-threatening to insignificant. A dolphin may act as if it is experiencing mild colic. In most cases these signs are the result of flatus, which is relieved when the gas passes. Cetaceans experiencing apparent high-altitude sickness (acute mountain sickness) can exhibit similar symptoms. However, this condition does not go away untreated and is life-threatening. Maintaining control of cabin pressure appears the best method of dealing with this disease. Since previous attempts to treat altitude sickness in cetaceans have met with limited success, it is best to opt for prevention. A well-planned transport with appropriate equipment, executed in a professional manner, results in minimal requirement for medical intervention.

Conclusion

Safe, successful transportation of marine mammals may be routinely achieved with constant attention to detail and proper planning, preparation, communication, and execution. For cetaceans, care must be taken to ensure correct support of the animal while in transit. In the case of all marine mammals, and especially with sea otters, attention must be given to the thermoregulatory needs to prevent overheating. Competent attendants must be constantly aware of each animal's condition to ensure the animal is traveling comfortably. The logistics

of proper marine mammal transport must include, but not be limited to, adequate staffing, correct equipment, and appropriate scheduling and routing.

Acknowledgments

The authors thank Steve Clark and Marion and Mick Heller for their editorial assistance and Laurie Gage and Jeff Boehm for their peer reviews of the chapter. The authors also want to thank Dee Dee Dilworth and Judy Swift for assistance in the preparation of this manuscript. This manuscript was assigned SeaWorld publication no. 200-04-C.

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CONTAINER REQUIREMENT 55

Applicable to:

Beluga	Narwhal
Dolphin species	Porpoise species
Dugong	Sea cow
Killer whale	Whale species
Manatee species	

1. DESIGN AND CONSTRUCTION

(see Exception QF-01 in Chapter 3)

Materials

Aluminium, canvas, fibreglass, foam rubber, plastics, PVC and wood.

Ancillary equipment – mechanical hand sprayer.

Principles of Design

The following principles of design must be met in addition to the General Container Requirements outlined at the beginning of this chapter.

Construct a waterproof box, made from wood with plastics liner, or wood and fibreglass, or moulded fibreglass, or construct a tubular aluminium frame with waterproof liner.

The size will permit one animal to be suspended in a stretcher of canvas or other suitable material supported on a foam rubber pad. Slits must be made in the stretcher to allow the flippers to protrude outside the stretcher. The marine mammal is accustomed to weightless environment in water and, therefore, when out of water may be unduly affected by gravity.

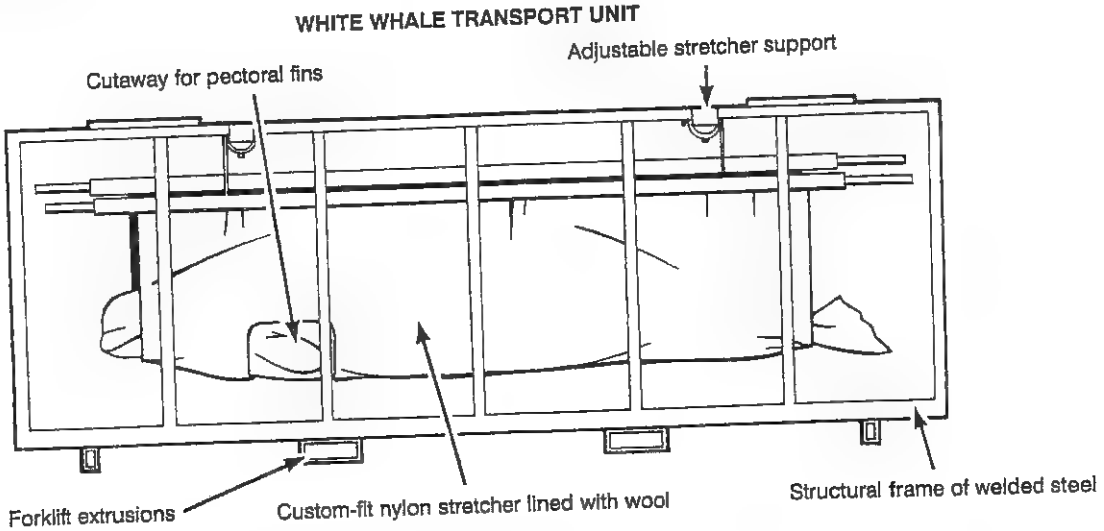
The container must be of adequate length to afford a minimum of 8 cm (3 in) of clearance at the head and tail for the animal.

The container must be of sufficient width to assure a minimum of 8 cm (3 in) of clearance between the stretcher bars and sides.

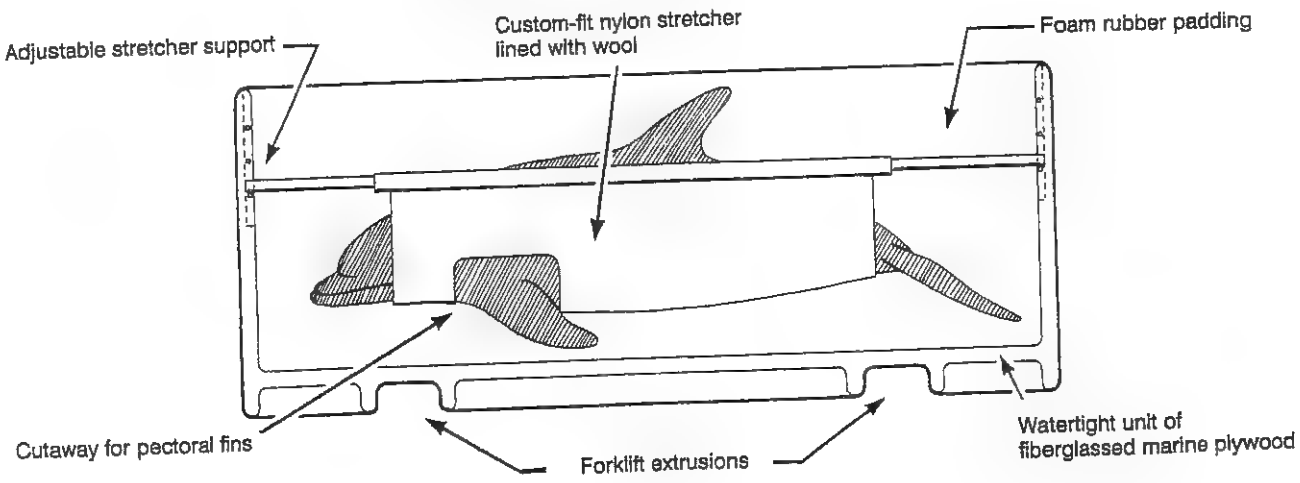
The container must be watertight.

EXAMPLE:

WHITE WHALE TRANSPORT UNIT



BOTTLENOSE DOLPHIN TRANSPORT UNIT



CONTAINER REQUIREMENT 55 *(cont'd)*

2. PREPARATIONS BEFORE DISPATCH
(see Chapter 5)

Critical areas of the body, e.g. under flippers, dorsal fin, tail fluke and head must be thoroughly covered with lanolin/petroleum jelly compound ointment, zinc oxide (or combination of each) to protect against over-heating by retaining moisture, if moisturising by the attendant during flight is not possible.

Padded restraining belts must be firmly but not forcibly, fastened over the animal to prevent violent jumps. With regard to the shipment of manatees, special restraining straps must be used to prevent rolling.

3. FEEDING GUIDE

No feeding is required during transportation.

4. GENERAL CARE AND LOADING

An attendant is required who must have access to the animal(s) at all times.

No attendant must be in care of more than four animals.

Attendant must have mechanical hand sprayer available.

Water must not be sprayed over the head of the animal nor near the breathing hole (blowhole), or in the case of the manatee or dugong, nostrils.

Aquatic mammals carried in slings travel better when loaded transversely across the aircraft.

CONTAINER REQUIREMENT 56

Applicable to all live corals, including the orders antipatharia, scleractinia and classes alcyonaria and hydrozoa.

Note: *This container requirement must not apply to rock devoid of live coral.*

1. DESIGN AND CONSTRUCTION

Materials

Cardboard, fibreboard, or other equivalent outer container material. Expanded polystyrene, styrofoam, or other equivalent insulating material.

Principles of Design

The following principles of design must be met in addition to the General Container Requirements outlined at the beginning of this section.

Outer Container

The outer container must be constructed of corrugated cardboard, expanded polystyrene, styrofoam, or other equivalent packaging material strong enough to contain the weight of water and resist crushing during transport. The inner surface of the outer container must be smooth and non-abrasive.

Inner Container

Requirements of live corals: Strong plastic (polyethylene or equivalent) bag or other equivalent container large enough to accommodate the specimen and deep enough so that it can be sealed to prevent leakage. The bag must be able to be opened and resealed without endangering the animals within. It is preferable that the bag(s) be placed in an outer bag of similar size so as to prevent water leakage.

Insulation/Cushioning

Expanded polystyrene or styrofoam contained of at least 1.25 cm (½ in) thickness on all sides must be provided. Other equivalent suitable insulating materials may be used.

2. PREPARATIONS BEFORE DISPATCH
(see Chapters 5 and 6)

Shippers are advised to pack one piece per inner container (see Dry Method for exceptions). Bags must be packed carefully so as to minimise crushing during transport.

Recommended Methods of shipping Live Corals

Wet Methods *(not suitable to all species)*

(a) Animals must be placed in strong transparent plastic bags or equivalent containers large enough to accommodate the specimens. The inner bag must be filled with water adequate enough to submerge the specimens. The remainder of the bag must be filled with oxygen. It is preferable that each bag is placed in an outer bag to prevent water leakage. Newspaper or other material may be used between the bags to minimise punctures.

(b) Corals can be attached to a "float" and then placed into plastic bags or equivalent containers with adequate water to flat the specimen.

Appendix B

1060 North Aurora Road • Aurora, Ohio 44202
(330) 562-7131 • Fax (330) 562-7020
www.sixflags.com

Ann D. Terbush
Chief, Permits Division
Office of Protected Resources
National Marine Fisheries Services
1315 East-West Highway, Room 13705
Silver Springs, MD 20910-3226

Dear Ms. Terbush:

This letter is in reference to the permit application for the import of one killer whale, by Funtime, Inc. d/b/a Six Flags Worlds of Adventure. I am a licensed veterinarian in the state of Ohio and have experience and knowledge in the field of marine mammal medicine and care.

Discussions and preparations for this animal transport are currently being held with all involved parties. A thorough review of the preparations will be conducted prior to the transport. Moreover, the transport will comply with APHIS regulation 9 CFR 3.116, Care in transit. A complete and appropriate transport plan will be developed and maintained on file at the facility. Funtime, Inc. veterinary staff will do a complete review of the animal's medical history prior to the transport. Standard medical evaluation techniques will be used.

I certify that the professional animal care and veterinary staff have reviewed the methods for transport, the facilities, and the continued care of the killer whale. Funtime, Inc. staff will acclimate with the animal at the Mundo Marino facility prior to the transport, as well as, the staff from Mundo Marino will help acclimate the animal at the Funtime, Inc. facility. The methods and facilities described will adequately provide for the well-being of the killer whale.

Sincerely,

Tobi Pledger

Tobi Pledger, DVM
Staff Veterinarian

SECRETARIA DE
DESARROLLO SUSTENTABLE Y POLITICA AMBIENTAL
DIRECCION DE RECURSOS ICTICOLAS Y ACUICOLAS

FORM.- **C**

CERTIFICADO DE INGRESO/EGRESO DE MAMIFEROS MARINOS

FECHA DE PRESENTACION: 03/03/00

NUMERO DE HABILITACION: 4

RAZON SOCIAL O NOMBRE DEL TITULAR: *MUNDO MARINO S.A.*

MAMIFEROS MARINOS EN EXISTENCIA AL MOMENTO DE LA HABILITACION: (VER PLANILLA ANEXA)

CANTIDAD	FECHA INGRESO	NOMBRE CIENTIFICO	SEXO	MARCAS IDENTIFICATORIAS	ORIGEN (2)
11		*Arctocephalus australis*			
2		*Mirounga leonina*			
2		*Orcinus orca*			
9		*Otaria flavescens*			
7		*Tursiops gephyreus*			

MAMIFEROS MARINOS INGRESADOS A POSTERIORI DE LA HABILITACION: (VER PLANILLA ANEXA)

CANTIDAD	FECHA INGRESO	NOMBRE CIENTIFICO	SEXO	MARCAS IDENTIFICATORIAS	ORIGEN (2)
1	25/11/99	*Arctocephalus australis*	H	No declaradas	Nacimiento
1	25/01/97	*Otaria flavescens*	H	Foto entregada sin descripción de marcas identificatorias	Importación
2		*Tursiops gephyreus*			Nacimiento

ANIMALES QUE SE SOLICITA INGRESAR / EGRESAR (1): (VER PLANILLA ANEXA)

CANTIDAD	FECHA INGRESO/EGRESO	NOMBRE CIENTIFICO	SEXO	MARCAS IDENTIFICATORIAS	ORIGEN (2)
1	26/02/98	*Otaria flavescens* "Pola"	H	No declaradas	Muerte
2		*Tursiops gephyreus*			Muerte
1	04/02/00	*Orcinus orca* "Belén"	H	Cicatrices : en aleta pectoral derecha: corte en el borde posterior, con prominencia de un pequeño apéndice	Muerte
1	18/01/00	*Otaria flavescens* "Tabaré"	M	no declaradas	Muerte
1	27/02/00	*Arctocephalus australis* "Tony"	M	Marcas en el borde de la aleta pélvica derecha	Muerte

PARA LLENAR POR LA AUTORIDAD DE APLICACION:

03/03/00
Fecha

Lic. JOSE [illegible]
Firma y sello del funcionario

(1) Tachar lo que no corresponda
(2) Especificar:
- En el caso de un ingreso de Mamiferos Marinos, si se trata de:
  Importación / Transferencia / Nacimiento / Captura / Varamiento
- En el caso de un Egreso de Mamiferos Marinos, si se trata de:
  Exportación / Transferencia / Muerte / Liberación

INSTRUCTIVO:

- En el caso de una **Importación, Exportación, Transferencia, Captura o Liberación** deberá haberse tramitado previamente una **Solicitud de Ingreso/Egreso** ante esta Autoridad de Aplicación.
- En el caso de **Nacimiento**, deberá adjuntarse un Certificado Veterinario, y la ficha técnica individual del ejemplar, incluyendo: datos de los padres, fecha de nacimiento, peso, longitud y foto.
- En el caso de **Muerte**, deberá adjuntarse el informe de la necropsia, y la ficha técnica individual del ejemplar.
- En el caso de **Varamiento**, deberá adjuntarse la ficha técnica individual del ejemplar.
- En el caso de **Captura/Liberación**, deberá adjuntarse el informe sobre las operaciones.

INGRESO DE ANIMALES

MAMIFEROS MARINOS EN EXISTENCIA AL MOMENTO DE LA HABILITACION

CANTIDAD	FECHA INGRESO	NOMBRE CIENTIFICO	SEXO	MARCAS IDENTIFICATORIAS	ORIGEN
1	13/01/79	*Arctocephalus australis* "Tomy"	M	Marcas : borde aletá pélvica	Varamiento Playas al sur de Punta Rasa
1	22/02/82	*Arctocephalus australis* "Gina"	H	Cicatrices : aleta pectoral derecha	Varamiento Playas al sur de Punta Rasa
1	19/12/82	*Arctocephalus australis* "Luján"	M	Cicatrices : muesca en borde posterior de aleta pectoral derecha	Varamiento Playas al sur de Punta Rasa
1	21/11/83	*Arctocephalus australis* "Yogui"	H	Foto entregada sin descripción de marcas	Varamiento Playas al sur de Punta Rasa
1	24/02/84	*Arctocephalus australis* "Tina"	H	Marcas : aleta pectoral derecha	Varamiento Playas al sur de Punta Rasa
1	06/12/84	*Arctocephalus australis* "Toroto"	M	Cicatrices : marcas en borde posterior de aleta pectoral izquierda	Nacimiento
1	24/12/87	*Arctocephalus australis* "Noel"	M	Cicatrices : muesca en el borde posterior de aleta pectoral izquierda	Nacimieno
1	14/12/88	*Arctocephalus australis* "Salvatore"	M	Marcas : ausencia de colmillo superior derecho	Varamiento Playas al sur de Punta Rasa
1	01/03/90	*Arctocephalus australis* "Loly"	M	Foto entregada sin descripción de marcas	Varamiento Santa Clara del Mar
1	05/12/90	*Arctocephalus australis* "Marta"	H	Foto entregada sin descripción de marcas	Varamiento Playas al sur de Punta Rasa
1	31/12/95	*Arctocephalus australis* "Tyson"	M	Manchas : zona submaxilar de color marrón clara. Bigotes blancos	Varamiento Playas San Clemente
1	14/02/89	*Mirounga leonina* "Laly"	H	Cicatrices : cicatriz en labio superior	Varamiento Balneario Reta
1	12/06/89	*Mir ounga leonina* "Bernardo"	M	Cicatrices : muesca en aleta pélvica derecha	Varamiento Playas al sur de Punta Rasa
1	08/01/88	*Orcinus orca* "Belén"	H	Cicatrices : en aleta pectoral derecha : corte en el borde posterior, con prominencia de un pequeño apéndice	Varamiento Playas al sur de Punta Rasa
1	10/11/02	*Orcinus orca* "Kahamenk"	M	Cicatrices : aleta caudal : presenta dos muescas en el borde posterior del lóbulo derecho	Varamiento Cangrejales Bahía Samborombón
1	10/09/82	*Otaria flavescens* "Tabaré"	M	Manchas : borde posterior de aleta pectoral izquierda	Captura Incidental Apostadero artificial del Pto. Mar del Plata
1	02/08/84	*Otaria flavescens* "Carolina"	H	Manchas : en aleta pectoral derecha	Varamiento Playas al sur de Punta Rasa
1	02/08/84	*Otaria flavescens* "Lila"	H	Marcas : verruga en el hocico lateral izquierdo	Varamiento Playas al sur de Punta Rasa
1	02/08/84	*Otaria flavescens* "Malvina"	H	Marcas : verruga sobre párpado superior del ojo derecho	Varamiento Playas al sur de Punta Rasa
1	03/02/85	*Otaria flavescens* "Luz"	H	Marcas: ojo izquierdo	Nacimiento
1	02/02/89	*Otaria flavescens* "Pola"	H	no declaradas	Nacimiento
1	18/06/91	*Otaria flavescens* "Susan"	H	Manchas : bigotes marrones y trompa redondeada	Importación Uruguay
1	18/06/91	*Otaria flavescens* "Tania"	H	Marcas : trompa achatada	Importación Uruguay
1	16/02/92	*Otaria flavescens* "Gaia"	H	Marcas : corte en el borde posterior de la aleta pectoral izquierda	Nacimiento
1	20/07/82	*Tursiops gephyreus* "Vilma"	H	no declaradas	Captura Incidental en trasmallo de corvina. Bahía Samborombón
1	23/11/82	*Tursiops gephyreus* "Clementina"	H	Cicatrices : aleta dorsal: borde posterior irregular con varias muescas	Nacimiento
1	29/11/82	*Tursiops gephyreus* "Bocón"	M	no declaradas	Captura Incidental en trasmallo de corvina. Bahía Samborombón

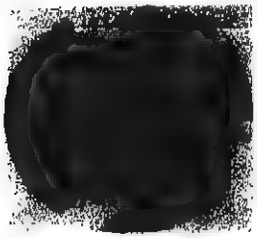
CANTIDAD	FECHA INGRESO	NOMBRE CIENTIFICO	SEXO	MARCAS IDENTIFICATORIAS	ORIGEN
1	19/12/90	*Tursiops gephyreus* "Golieth"	M	Cicatrices : muesca en el borde posterior de la aleta dorsal	Varamiento Desembocadura Río Tijer
1	15/03/91	*Tursiops gephyreus* "Floppy"	H	Cicatrices : dos muescas en el borde posterior del lóbulo derecho de la aleta caudal	Varamiento Desembocadura Río Tijer
1	16/03/91	*Tursiops gephyreus* "Estrella"	H	Cicatrices : muesca en el borde posterior de la aleta dorsal	Varamiento Desembocadura Río Tijer
1	27/12/95	*Tursiops gephyreus* "Quimey"	M	Cicatrices : una muesca en el borde posterior del lóbulo derecho de la aleta caudal	Nacimiento

MAMIFEROS MARINOS INGRESADOS A POSTERIORI DE LA HABILITACION

CANTIDAD	FECHA EGRESO	NOMBRE CIENTIFICO	SEXO	MARCAS IDENTIFICATORIAS	ORIGEN
1	25/01/97	*Otaria flavescens* "Barumi"	H	Foto entregada sin descripción de marcas	Importación
1	05/10/98	*Tursiops gephyreus* "Ciembo"	M	Foto entregada sin descripción de marcas (no posee aún)	Nacimiento
1	11/09/99	*Tursiops gephyreus* "Cachorro de Estrella"	M	Foto entregada sin descripción de marcas (no posee aún)	Nacimiento
1	23/11/99	*Arctocephalus australis* "Yoko"	H	no declaradas	Nacimiento

EGRESO DE ANIMALES

CANTIDAD	FECHA EGRESO	NOMBRE CIENTIFICO	SEXO	MARCAS IDENTIFICATORIAS	ORIGEN
1	26/02/98	*Otaria flavescens* "Pola"	H	No declaradas	Muerte
1	21/01/98	*Tursiops gephyreus* "Vilma"	H	No declaradas	Muerte
1	13/05/98	*Tursiops gephyreus* "Bocón"	M	No declaradas	Muerte
1	16/01/00	*Otaria flavescens* "Tabaré"	M	Borde posterior de aleta pectoral izquierda	Muerte
1	04/02/00	*Orcinus orca* "Belén"	H	Cicatrices en aleta pectoral derecha : corte en el borde posterior, con prominencia de un pequeño apéndice	Muerte
1	27/02/00	*Arctocephalus australis* "Tony"	M	Marcas en el borde de la aleta pélvica derecha	Muerte



Multinational Translating Svc.
928 Connetquot Avenue
Central Islip, NY 11722

"In any language, communication is our business"

CERTIFICATION

This is to certify that the information in the attached translated document, Form C, Marine Mammals Ingress/Egress Certificate, concerning Mundo Marino S.A., is true and correct. The document was translated from a faxed copy on October 21, 2001 by Mr. Eduardo Zaldibar ID# 1066. Mr. Zaldibar is fluent in Spanish and English and is a registered translator and interpreter with Multinational Translating Service.

Signed: _____
Karen Miller, Partner
Multinational Translating Service, NY

County of Suffolk)
SS:
State of New York)

Sworn to before me this 23rd day of October, 2001

Notary Public: _____

My Commission Expires: LEONARD P. CORAZZA
Notary Public, State of New York
No. 24-4830858
Qualified in Kings County
Commission Expires 2-28-2002

SECRETARIAT OF SUSTAINABLE DEVELOPMENT AND ENVIRONMENTAL POLICY ICHTHYOLOGIC AND AQUACULTURE DIRECTORATE	**C** **FORM** **MARINE MAMMALS INGRESS/EGRESS CERTIFICATE**
SUBMISSION DATE 03/03/00	AUTHORIZATION NUMBER:
TRADE NAME OR NAME OF HOLDER: ***MUNDO MARINO S.A.***	

EXISTING MARINE MAMMALS UPON AUTHORIZATION: (SEE ATTACHED LIST)

QUANTITY	INGRESS DATE	SCIENTIFIC NAME	SEX	IDENTIFYING MARKS	ORIGIN (2)
11		*Arctocepahlus australis*			
2		*Mirounga leonina*			
2		*Orcinus orca*			
9		*Otaria flavascens*			
7		*Tursiops gephyreus*			

MARINE MAMMALS ENTERED AFTER THE AUTHORIZATION: (SEE ATTACHED LIST)

QUANTITY	INGRESS DATE	SCIENTIFIC NAME	SEX	IDENTIFYING MARKS	ORIGIN (2)
1	11/25/99	*Arctocepahlus australis*	F	None stated	Birth
1	01/25/97	*Otaria flavascens*	F	Picture issued without description of IDENTIFYING marks	Import
2		*Tursiops gephyreus*			Birth

ANIMALS TO AUTHORIZE FOR ~~INGRESS~~ / EGRESS (1): (SEE ATTACHED LIST)

QUANTITY	~~INGRESS~~/EGRESS DATE	SCIENTIFIC NAME	SEX	IDENTIFYING MARKS	ORIGIN (2)
1	02/26/98	*Otaria flavascens* "Pola"	F	None stated	Death
2		*Tursiops gephyreus*			Death
1	02/04/00	*Orcinus orca* "Belén"	F	Scars: On right pectoral fin: cut on the rear edge, with prominence of a small appendix	Death
1	01/16/00	*Otaria flavascens* "Tabaré"	M		Death
1	02/27/00	*Arctocepahlus australis* "Tomy"	M		Death

TO BE COMPLETED BY THE CORRESPONDING AUTHORITY

03/03/00
Date

Illegible Signature
Authority signature and stamp

(1) Cross out whatever does not correspond
(2) Specify:
– In the event of an ingress of Marine Mammals, if it is an:
Import / Transfer / Birth / Capture / Beaching
In the event of an egress of Marine Mammals, if it is an:
Export / Transfer / Death / Liberation

INSTRUCTIONS:

INGRESS OF ANIMALS

EXISTING MARINE MAMMALS UPON AUTHORIZATION

QUANTITY	INGRESS DATE	SCIENTIFIC NAME	SEX	IDENTIFYING MARKS	ORIGIN
1	01/13/79	*Arctocepahlus australis* "Tomy"	M	Mark: Edge of pelvic fin	Beaching at beaches south of Punta Rasa
1	02/22/82	*Arctocepahlus australis* "Gina"	F	Scars: Right pectoral fin	Beaching at beaches south of Punta Rasa
1	12/19/82	*Arctocepahlus australis* "Luján"	M	Scars: Nick on rear edge of right pectoral fin	Beaching at beaches south of Punta Rasa
1	11/21/83	*Arctocepahlus australis* "Yogui"	F	Picture delivered w/o marks description	Beaching at beaches south of Punta Rasa
1	02/24/84	*Arctocepahlus australis* "Tina"	F	Marks: Right pectoral fin	Beaching at beaches south of Punta Rasa
1	12/06/91	*Arctocepahlus australis* "Poroto"	M	Scars: Marks on rear edge of left pectoral fin	Birth
1	12/24/87	*Arctocepahlus australis* "Noel"	M	Scars: Nick on rear edge of left pectoral fin	Birth
1	12/14/88	*Arctocepahlus australis* "Salvatore"	M	Marks: upper right fang missing	Beaching at beaches south of Punta Rasa
1	03/01/90	*Arctocepahlus australis* "Loly"	M	Picture delivered w/o marks description	Beaching at Santa Clara del Mar
1	12/05/90	*Arctocepahlus australis* "Marta"	F	Picture delivered w/o marks description	Beaching at beaches south of Punta Rasa
1	12/31/95	*Arctocepahlus australis* "Tyson"	M	Spots: Submaxilar area light brown colored. White moustaches	Beaching at beaches San Clemente
1	02/14/89	*Mirounga leonina* "Laly"	F	Scars: Scar on upper lip	Beaching at beaches Reta beach resort
1	05/12/89	*Mirounga leonina* "Bernardo"	M	Scars: Nick on right pelvic fin	Beaching at beaches south of Punta Rasa
1	06/01/88	*Orcinus orca* "Belén"	F	Scars: On right pectoral fin: cut on rear edge, with prominence of small appendix	Beaching at beaches south of Punta Rasa
1	11/19/92	*Orcinus orca* "Kshamenk"	M	Scars: Caudal fin displays two nicks on rear edge of right lobe.	Beaching at Bahía San Borombón swampy crab grounds
1	09/10/82	*Otaria flavascens* "Tabare"	M	Spots: Rear edge of left pectoral fin	Incidental capture at Mar del Plata Artificial Harbor Naval Station
1	08/02/84	*Otaria flavascens* "Carolina"	F	Spots: on right pectoral fin	Beaching at beaches south of Punta Rasa
1	08/02/84	*Otaria flavascens* "Lila"	F	Marks: Wart on left lateral nostril	Beaching at beaches south of Punta Rasa
1	08/02/84	*Otaria flavascens* "Malvina"	F	Marks: Wart on upper eyelid, on right eye	Beaching at beaches south of Punta Rasa
1	03/02/85	*Otaria flavascens* "Luz"	F	Marks: Left eye	Birth
1	02/02/89	*Otaria flavascens* "Pola"	F	None stated	Birth
1	06/18/91	*Otaria flavascens* "Susan"	F	Spots: Brown moustache and rounded snout	Import from Uruguay
1	06/18/91	*Otaria flavascens* "Tania"	F	Marks: Flattened snout	Import from Uruguay
1	02/16/92	*Otaria flavascens* "Gala"	F	Marks: Cut on rear edge of left pectoral fin	Birth
1	07/20/82	*Tursiops gephyreus* "Vilma"	F	Non stated	Incidental capture during corvine trammeling at Bahía Sanboronbón
1	11/23/82	*Tursiops gephyreus "Clementina"*	F	Scars: Irregular rear edge dorsal fin w/several nicks	Birth
1	11/29/82	*Tursiops gephyreus "Bocón"*	F	None stated	Incidental capture during corvine trammeling at Bahía Sanboronbón

Prepared by Multinational Translating Service, NY
Translated from a faxed copy on October 21, 2001
By: Mr. Eduardo Zaldibar. Translator ID# 1066
Certification Attached

QUANTITY	INGRESS DATE	SCIENTIFIC NAME	SEX	IDENTIFYING MARKS	ORIGIN
1	12/19/90	*Tursiops gephyreus* "Goliath"	M	Scars: Nick on rear edge of dorsal fin	Beaching at beaches south of Punta Rasa
1	03/15/91	*Tursiops gephyreus* "Floppy"	F	Scars: Two nicks on rear edge of caudal fin right lobe	Beaching at beaches south of Punta Rasa
1	03/16/91	*Tursiops gephyreus* "Estrella"	F	Scars: Nick on rear edge of rear dorsal fin	Beaching at beaches south of Punta Rasa
1	12/27/95	*Tursiops gephyreus* "Quimay"	M	Scars: Nicks on rear edge of caudal fin right lobe	Beaching at beaches south of Punta Rasa

MARINE MAMMALS ENTERED AFTER AUTHORIZATION

QUANTITY	INGRESS DATE	SCIENTIFIC NAME	SEX	IDENTIFYING MARKS	ORIGIN
1	01/25/97	*Otaria flavascens* "Barumi"	F	Picture delivered w/o marks description	Import
1	10/05/98	*Tursiops gephyreus* "Clembo"	M	Picture delivered w/o marks description (Does not have yet)	Birth
1	09/11/99	*Tursiops gephyreus* "Cachorro de Estrella"	M	Picture delivered w/o marks description (does not have yet)	Birth
1	11/23/99	*Arctocepahlus australis* "Yoko"	F	None stated	Birth

EGRESS OF ANIMALS

QUANTITY	INGRESS DATE	SCIENTIFIC NAME	SEX	IDENTIFYING MARKS	ORIGIN
1	02/26/98	*Otaria flavascens* "Pola"	F	None stated	Death
1	01/21/98	*Tursiops gephyreus* "Vilma"	F	Non stated	Death
1	05/13/98	*Tursiops gephyreus* "Bocón"	F	None stated	Death
1	01/16/00	*Otaria flavascens* "Tabare"	M	Rear edge of left pectoral fin	Death
1	02/04/00	*Orcinus orca* "Belén"	F	Scars on right pectoral fin: cut on rear edge, with prominence of small appendix	Death
1	02/27/00	*Arctocepahlus australis* "Tomy"	M	Marks on edge of right pelvic fin	Death

Prepared by Multinational Translating Service, NY
Translated from a faxed copy on October 21, 2001
By: Mr. Eduardo Zaldibar. Translator ID# 1066
Certification Attached

MUNDO MARINO
SAN CLEMENTE DEL TUYÚ • ARGENTINA

To Whom It May Concern:

This letter is in reference to the male killer whale to be imported to the United States from Argentina.

In cases of stranded animals, it is necessary to try by all possible means to return it to the sea. Only when an animal is wounded or damaged is it approved to be transported to a veterinary center for medical care.

The technicians periodically inform the government about the treatment of each animal. After treatments the technicians determine if the animal can be released back to the sea. When this is not possible the animal stays at the zoological institution, which in this case, the killer whale stays at Mundo Marino.

Sincerely,

José David Méndez
Director
Mundo Marino

MUNDO MARINO S.A. - Av. Décima N° 157 - C.C. N°6 - ☎ (02252) 43-0300 (Líneas rotativas) FAX (02252) 42-1501
E-mail: mundomar@satlink.com. - B7105GDB San Clemente del Tuyú Prov. Buenos Aires - Argentina
Oficina Bs. As. Av. Córdoba 935 - C1054AAI Capital Federal - Tel.(011)4325-2900 al 05 (Líneas rotativas) -- Fax (011)4325-2906

USDA

EXPIRATION DATE: FEBRUARY 27, 2002

United States Department of Agriculture

Marketing and Regulatory Programs

Animal and Plant Health Inspection Service

Animal Care

This is to certify that

FUNTIME, INC.

is a licensed CLASS C EXHIBITOR

under the

Animal Welfare Act

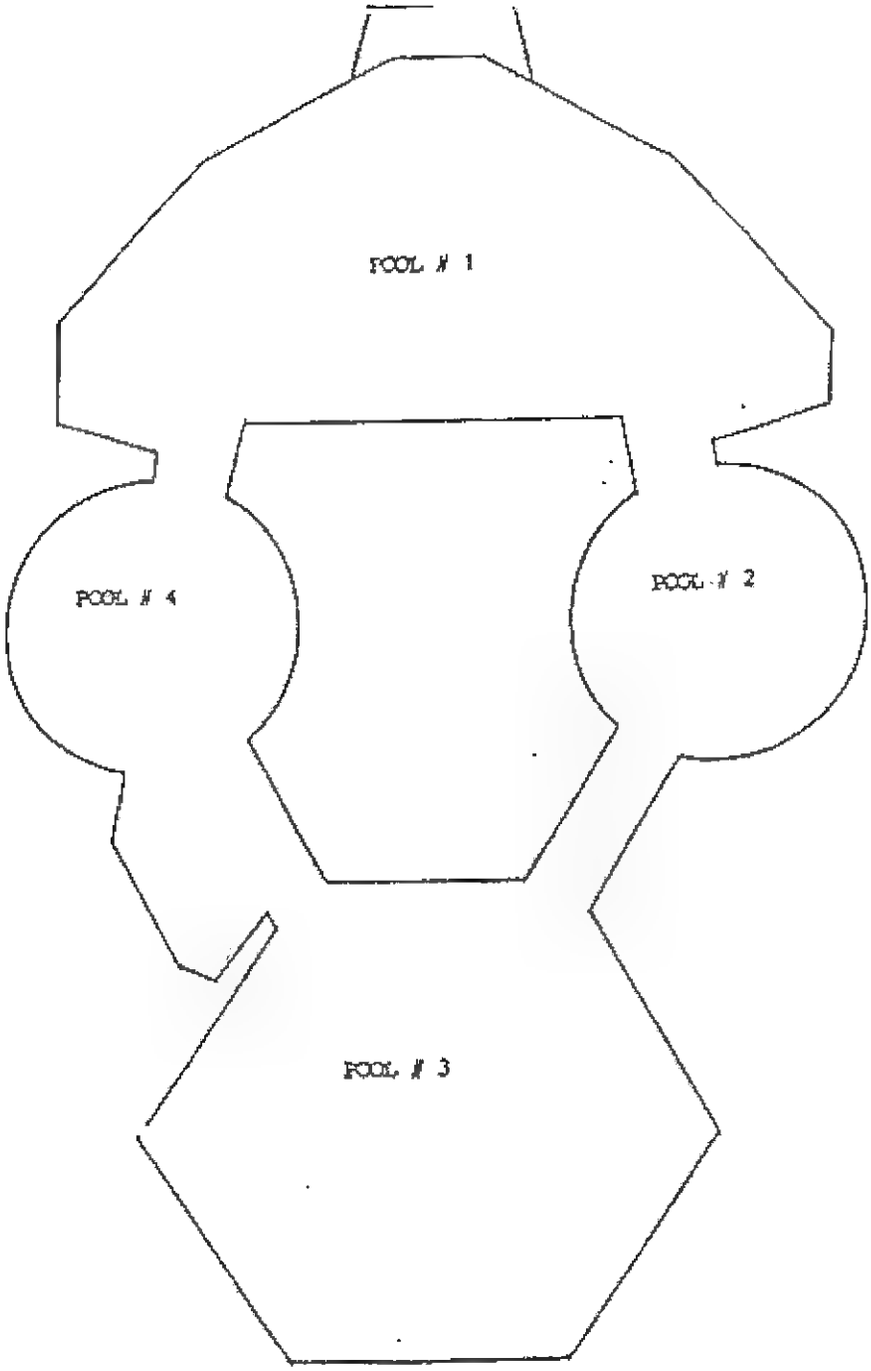
(7 U.S.C. 2131 et seq.)

Certificate No 31-C-0137

Customer No 13564

Deputy Administrator

APHIS FORM 7007 (NOV 99) *Previous editions are obsolete*



Marine Mammal Stadium

Pool #1	Length	97 ft	**Pool #3**	Length	65 ft.
	MHD	45 ft.		MHD	65 ft.
	SA	2,782 sq. ft.		SA	3,000 ft.
	VOL	66,823 cu. Ft.		VOL	42,876 cu. ft.
	Depth	15 ft sloping to 26 ft.		Depth	12 ft. sloping to 15 ft.
	Gallons	508,861		Gallons	327,573
Pool #2	Length	35 ft.	**Pool #4**	Length	35 ft.
	MHD	35 ft.		MHD	35 ft.
	SA	961.6 sq. ft.		SA	1,273 sq. ft.
	VOL	8,660 cu. ft.		VOL	9,828 cu. ft.
	Depth	9 ft. sloping to 10 ft.		Depth	8 ft.
	Gallons	66,250		Gallons	75,085

Funtime, Inc.
1060 N. Aurora Road
Aurora, OH 44202

OCT 2

I. Title of the Application

Application for a Permit for Public Display under the Marine Mammal Protection Act.

Funtime, Inc. d/b/a Six Flags Worlds of Adventure requests authorization to import one adult female killer whale from Marineland S.A., Antibes, France, to its facility in Aurora, Ohio for the purposes of public display.

II. Date of the Application

October 27, 2001

III. Applicant

Funtime, Inc. is a direct subsidiary of Six Flags Theme Parks Inc., a publicly owned corporation. All correspondence regarding the application should be addressed to:

Primary Contact:

G. William Hughes
Zoological Director
1060 N. Aurora Road
Aurora, OH 44202
Phone: (330) 995-2149
Fax: (330) 995-2117
E-Mail: bhughes@sftp.com

Responsible Official:

Joe Costa
Vice President/General Manager
1060 N. Aurora Road
Aurora, OH 44202
Phone: (330) 562-7131, ext. 202
Fax: (330) 562-7020
E-Mail: jcosta@sftp.com

1004-1656

IV. Description of the Marine Mammals and the Proposed Activity

A. Statement of Work

Funtime, Inc. is requesting authorization to import one adult female killer whale (Orcinus orca) for public display.
This animal will enhance the North American cooperative breeding program for killer whales. The addition of this animal will provide additional genetic diversity to the successful breeding program of killer whales in North American. This animal will also be a major part of Funtime, Inc. education programs for the general public. Funtime, Inc. educational programs are open to all age groups of the general public during the summer months. Educational programs for schools, scouts, and community organizations are also offered during the school year. During the summer months over two million visitors will have the opportunity to view educational and entertaining presentations involving killer whales. The information in these presentations will also include information on protecting the marine environment.

B. Summary of Marine Mammals to be Taken, Imported, or Exported

1. One killer whale (Orcinus orca)

2. This import request does not include marine mammal parts.

3. This permit is for the importation of a captive born animal currently held at another zoological facility and will not involve, affect or take marine mammals from the wild.

C. Description of the Proposed Activity

1. Funtime, Inc. requests authorization to import one adult female killer whale, which was captive born on February 25, 1993 at Marineland, Cote d' Azur, France. The killer whale will be imported from Marineland S.A., 306 Avenue Mozart, 006600 Antibes, France, to Funtime, Inc., 1060 North Aurora Rd, Aurora, Ohio. The port of entry will be Cleveland, Ohio, USA.

2. Funtime, Inc. requests authorization to import this animal as soon as possible. Funtime, Inc. requests that the import permit be valid until the importation is complete.

3. The animal to be imported is an adult female killer whale 8 years old, weight 3,300 lbs., and 15 feet in length. This animal is identified by the name Shouka.

D. If Marine Mammals are to be Collected from the Wild

N/A

E. Taking of Marine Mammal Parts

N/A

F. Effects of the Proposed Activity

The importation of this animal for public display will, pursuant to the Marine Mammal Protection Act, help educate the general public on the concerns relating to marine mammals and the marine environment. In addition this animal will be available to participate in the North American cooperative breeding program for killer whales. With the limited number of animals in the breeding program, this animal will add important genetic diversity to the population. This animal is captive born and is currently housed in a zoological environment. The importation will not affect wild stock or the marine ecosystem.

V. Import Requirements

A. The animal will be transported under the direct supervision of Funtime, Inc. professional staff with extensive experience in the transport, medical care and management of killer whales. The names of some of the individuals are listed below.

G. William Hughes
Zoological Director
21 years of experience with marine mammals, including killer whales

Allen Kelley
Curator of Animal Training
25 years of experience with marine mammals, including killer whales

Laura Collins
Curator of Mammals and Birds
16 years of experience with marine mammals, including killer whales

Tobi Pledger, D.V.M.
Staff Veterinarian
7 years of experience with marine mammals, including killer whales

Laurie Gage, D.V.M.
Contract Veterinarian
21 years of experience with marine mammals, including killer whales

Eric Albers
Supervisor of Mammals
15 years of experience with marine mammals, including killer whales

Drew Delgross
Supervisor of Animal Training
15 years of experience with marine mammals, including killer whales

These individuals may be assisted be additional qualified Six Flags personnel.

B The killer whale will be transported in a specially designed and constructed transport unit from Marineland S.A., Antibes, France to Funtime, Inc., Aurora, Ohio. The transport unit is a waterproof box that measures 18 feet in length, 8 feet wide and 6 feet in height. A description of the transport unit is attached as Appendix A.

C. The transport will be via charter aircraft and truck, in accordance with professionally accepted techniques, as described in the 22nd edition of the International Air Transport Associations' " Live Animal Regulations", and in compliance with all applicable regulations, standards and conditions set forth under the Marine Mammal Protection act, Animal Welfare Act and Lacey Act. The transport will comply with APHIS regulations 9 CFR 3.116, Care in transit. The killer whale will remain under the care and supervision of Marineland S.A. until the transport commences. Funtime, Inc. will assume responsibility for the care and maintenance of the killer whale when it is placed in the transport unit. The transport is anticipated to take less than 15 hours, absent of unusual circumstances.

D. A written certification from the attending veterinarian is attached as Appendix B.

E. The killer whale will be exported from Antibes, France. This animal was captive born at Marineland, Cote d' Azur, France on February 25, 1993.

F. N/A

G. Marineland S.A. is in compliance with the French government rules and regulations as evidenced by the attached document. (Appendix C)

H. The importation of this killer whale will not result in the collection of a killer whale from the wild.

I. N/A

VI. Export Requirements

N/A

VII. General Requirements for Public Display

A. The facility to house the imported killer whale will be:

Funtime, Inc. d/b/a Six Flags Worlds of Adventure
1060 North Aurora Road
Aurora, OH 44202 USA

The operating hours and admission fees are explained on the attached brochures.

B. Funtime, Inc. is a licensed CLASS C EXIBITOR under the Animal Welfare Act (7 U.S.C. 2131 et seq.)
Certificate No. 31-C-0137 (copy attached)

C Education, conservation and research are critical components of the Funtime, Inc. mission. These elements will provide an important link to the future of wildlife around the world.

Funtime, Inc. is an American Zoo and Aquarium Association (AZA) accredited institution as well as a member of the Alliance of Marine Mammal Parks and Aquariums (AMMPA). The facility has been a member of the AZA since 1980, and a member of AMMPA for 9 years. Funtime, Inc. education programs were developed and are operated in accordance with the professionally recognized standards that have been established by these organizations. These standards have been published by the agency in the Federal Register. (Educational brochures attached)

Based on its commitment to education, Funtime, Inc. professional educators provide students with the opportunity to expand and enhance their knowledge and understanding of wildlife and the natural environment. The state science curriculum is utilized to evaluate the education programs, which are developed to compliment the academic requirements. Funtime, Inc. provides education programs throughout the year for all age groups. This is accomplished through a variety of media, including live animal exhibits, presentations, demonstrations, graphic displays, and narrated tours through the facility.

At the Funtime, Inc. facility, over two million visitors per year are exposed to a variety of marine mammals, birds and fish in a fascinating and educational manner.

Funtime, Inc. offers Outreach Programs (School Assembly Programs) for grades K-12. These programs are either ½ day or all day programs. Funtime, Inc. staff visits schools within Ohio and all the surrounding states. Funtime, Inc. instructors present programs using slides, videos, biological artifacts, songs, "dress up" costume and life size inflatable animals. These programs give students an opportunity to explore the marine environment from their classroom.

Funtime, Inc. offers Instructional Field Trips at the facility for school classes and other groups such as Boy Scouts and Girl Scouts. These programs are designed to be offered to students K-12, gifted, and college level.

During the summer months Funtime Inc. offers educational classes for all age groups and also conducts family classes. These classes vary from 1 to 5 days in length. They include sleepovers and training classes that help the students better understand the marine ecosystem.

In the local community, Funtime, Inc. offers complimentary educational programs at schools or at the facility. Funtime, Inc. has developed a program for a local school district, which has become a part of their yearly curriculum.

For each school that participates in any of the educational programs offered, a teacher's guide is provided for the specific grade level. These materials help the teachers prepare the students for the presentations on natural history of the animals, the principles of ecology, adaptations and behavior as well as other conservation issues.

Working with Ashland University, Funtime, Inc. will be offering teacher training workshops and seminars that will provide professional enrichment, and college credit.

Conservation/Research

Over the years, this facility has been involved in many conservation and research projects. Funtime, Inc. is committed to conservation efforts concerning wildlife and the environment. This facility has been a state and federal licensed facility for wildlife rehabilitation since 1996. Working in conjunction with state and federal agencies as well as a variety of state and national rehabilitation facilities, the staff has provided care to over 600 animals. Wildlife rehabilitation, including efforts involving local wildlife and endangered species, is conducted throughout the year. This facility has successfully rehabilitated and released sixty percent of the animals it received this past year. This service provides the general public with an opportunity help wildlife in their own back yard. Funtime, Inc. has also been involved in long-term care and release of marine mammals from the northeast stranding network. In prior years, the facility has rehabilitated, tagged and released two hooded seals in conjunction with the New England Aquarium and the National Aquarium in Baltimore.

Other projects that the staff has been involved with include: studies on freshwater mussels, local stream restoration and endangered animal surveys in the Cuyahoga Valley. Members of the Funtime, Inc. staff participated in the Coral Reef survey in Belize, Central America, while continuing to develop a self sustaining population of corals at our facility. Endangered African Cichlids (currently extinct in the wild) are being maintained at the facility with the possibility of reintroducing this species to their natural habitat. The park has been involved with the U.S. Fish and Wildlife Services on the Spectacled Eider Recovery Program (threatened species) since 1992.

Research provides Funtime, Inc with opportunities to advance the science of animal care, breeding and population management of animals in a zoological setting as well as in their natural environment. Projects conducted at the park include artificial diet studies with marine mammals, baseline blood parameters on penguins, signature whistles in bottlenose dolphins, growth rate studies on sand tiger sharks and various drug level studies on sharks and penguins.

Research efforts conducted in the field and in zoological institutions are necessary for a full understanding on the biology of any species. This data is important and necessary for the use in conservation efforts.

VIII. Previous Permits

No previous permits have been issued.

IX. Certification and Signature

"I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under one or more of the following statutes and the regulations promulgated thereunder, as indicated in section I. of this application:

The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) and regulations (50 CRF Part 216).

I also understand that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties provided under the Marine Mammal Protection Act of 1972."

G. William Hughes
Zoological Director
Six Flags Worlds of Adventure

10/27/2001
Date

APPENDIX A

The transport of the killer whale will be conducted via charter aircraft and truck in accordance with professionally accepted techniques and in compliance with all applicable regulations, standards, and conditions set forth under the Marine Mammal Protection Act, the Animal Welfare Act and the Lacey Act. The transport will comply with APHIS regulations 9 CFR 3.116 Care in transit. The transport is anticipated to take less than 22 hours, absent unusual circumstances. The professional staff has reviewed all transport procedures. An appropriate transport plan will be developed and maintained on file at the park.

Killer whales of this size have been successfully transported since 1965. The staff working on the transport has many years of experience transporting killer whales, as all are former SeaWorld personal. Killer whales have been transported in and out of this facility almost every year since 1972 without incident.

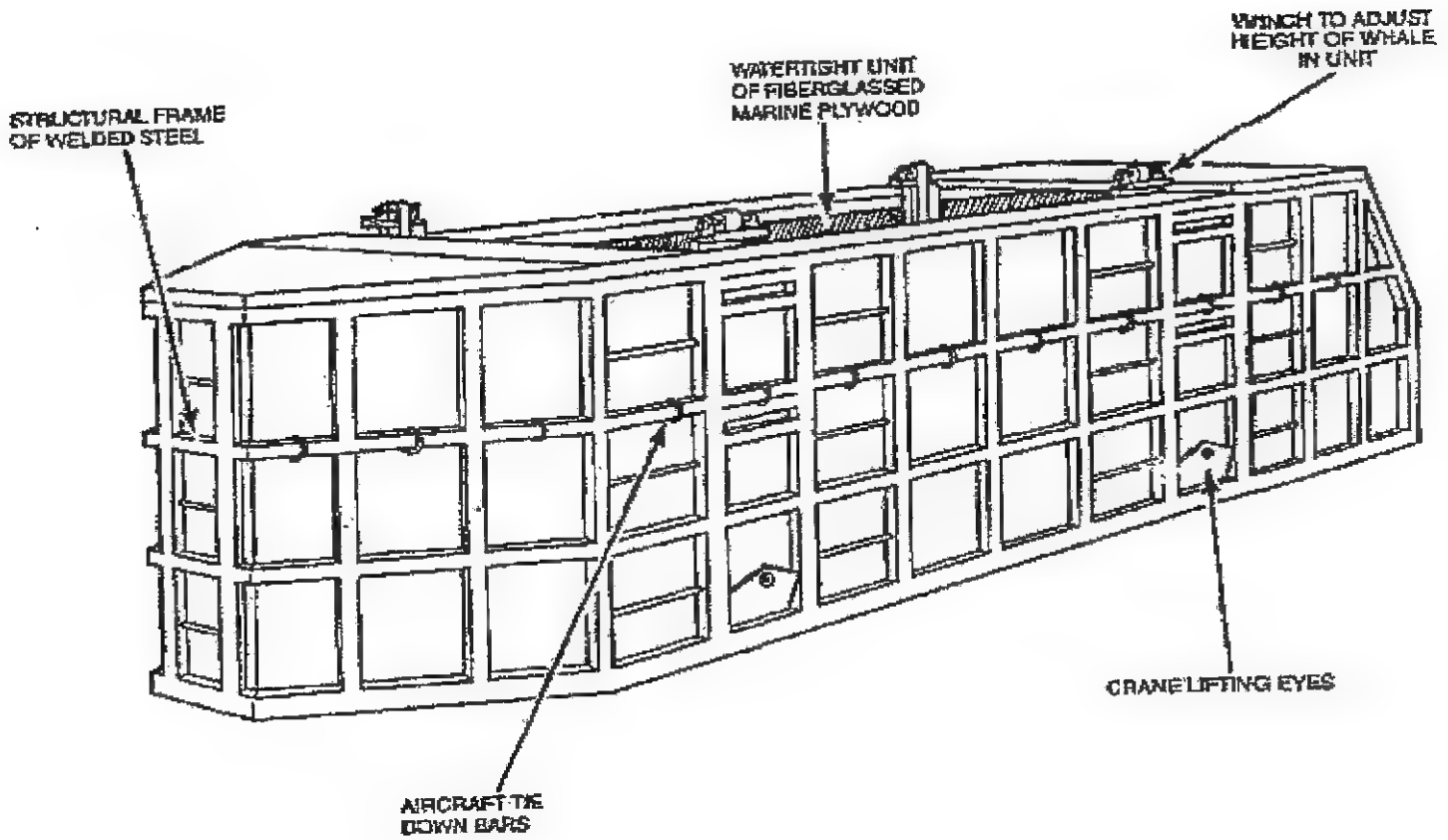
A veterinarian will accompany the animal at all times during the transport and the animal will be under the direct supervision of the Funtime, Inc. professional staff. During the transport the staff will monitor the water temperature, the animal's positioning, respiration and will have food available for the animal during transport. Attached is an illustration of the transport unit.

Reference -- CRC Handbook of Marine Mammal Medicine: Second Edition: edited by Leslie A. Dierauf and Frances M.D. Guland: CRC Press LLC: 2001

Reference: -- Live Animals regulations, 22nd Edition, International Air Transport Association: 1995 (page 215-216)

APPENDIX A

KILLER WHALE TRANSPORT UNIT



39

Marine Mammal Transport

Jim Antrim and James F. McBain

Introduction

During the last 30 years, specialized marine mammal transport techniques and equipment have been developed to cope with the unique physiology of marine mammals. Therefore, safe, successful transportation is possible with the proper attention to detail and the use of technology appropriate to the type of marine mammal being transported.

In moving marine mammals, one must always be aware of, and comply with, local, state/provincial, federal, and international laws and regulations or mandates regarding transportation. Since constant monitoring is necessary for the early detection and correction of respiratory, thermoregulatory, postural, and behavioral abnormalities, U.S. law mandates that a qualified attendant be present when transporting cetaceans, pinnipeds, sirenians, and sea otters (Department of Agriculture, 1999).

Regulations

Two published regulatory documents deal with the transport of marine mammals and should be consulted as appropriate. The first of these is applicable only to individuals transporting marine mammals under the jurisdiction of the United States. This document is commonly known as "The Animal Welfare Act—Specifications for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals" (Department of Agriculture, 1999) (see Chapter 33, Legislation). The portion of this document covering marine mammal transportation standards includes specifications for consignments to carriers and intermediate handlers, primary enclosures used to transport marine mammals, primary conveyances, food and water requirements, care in transit, terminal facilities, and methods of handling. Enforcement of this regulation is the responsibility of the U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS). The second document is "Live Animals Regulations," published by the International Air Transport Association (IATA), and accepted by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (Convention Resolution 4.20) and the Office International des Epizooties (OIE) as guidelines for transporting animals by air (International Air Transport Association, 1999). The European Economic Community, as well as many other countries, governmental entities, and airlines, have adopted these regulations as laws, policies, or minimum standards for transporting live animals in containers, pens, and stalls.

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History of Marine Mammal Transport

The overland transport of cetaceans has been documented at least as far back as 1554, when Rondelet, governing physician of the University of Medicine at Montpellier, France, recorded the regular transportation of live dolphins 130 miles inland by fishermen. These animals were shipped for the purpose of human consumption and were kept alive during transit to arrive at the market unspoiled (Rondelet, 1554).

In about 1861, P.T. Barnum reported the transport of six belugas or white whales (*Delphinapterus leucas*) from the St. Lawrence River to New York in a box on a bed of seaweed. Only one of these animals survived the transport and was exhibited for 2 years with a bottlenose dolphin (*Tursiops truncatus*) at Barnum's Museum (Wyman, 1863).

In 1877, a beluga, collected in Labrador, was shipped by sailing vessel to Montreal, then by train to New York, with a total of 14 days travel time. The animal was subsequently placed on a bed of seaweed for the 10-day steamship voyage to England, where it survived only 4 days after arrival. In the following year, the same route was used to transport four belugas. Three of these animals survived the trip (Lee, 1878).

Another early documented cetacean transport occurred in the 1870s when two belugas were sent from Labrador to the Brighton Aquarium in England in the flooded hold of a ship. Unfortunately, both animals died during the transport (Slijper, 1979). More closely approximating current transport methods, the New York Aquarium transported a group of bottlenose dolphins within water-filled boxes in 1907. About 5 years later, Taylor first employed a soft stretcher for marine mammal transportation (Townsend, 1914).

Early transport of killer whales (*Orcinus orca*) occurred much later and somewhat differently, due to the size of the animals involved. In June 1965, a floating pen pulled by a boat, measuring 18 × 12 × 5 m (59 × 40 × 16 ft), was used to transport an adult killer whale from Namu, British Columbia, to Seattle, Washington. The journey took 2 weeks and the animal traveled a distance of 675 km (422 miles) (Newman and McGreer, 1966). In December 1965, a female killer whale was transported by air in a box from Seattle, Washington, to SeaWorld, Inc. in San Diego, California. The animal was transported easily, and quickly acclimated to the zoological environment.

Cetaceans

Cetaceans spend their entire lives in water, which provides uniform support by equal distribution of pressure over the entire body (Ridgway, 1972). The result is near-weightlessness, allowing normal respiration. Additionally, water rapidly dissipates cetacean metabolic heat at 25 times the rate of air (Ridgway, 1972). As a result, when removed from their free-swimming state, the primary criteria that must be met to transport cetaceans successfully are adequate body support for their comfort and normal respiration, and a temperature control mechanism to assist with thermoregulation (see Figures 1 and 2).

Body support techniques have been developed to allow normal breathing during transport. Cetaceans are now moved in fabric stretchers and suspended in water-filled transport units, closely approximating the near-weightlessness of water. Also, the widespread use of aircraft for long-distance travel has shortened the amount of time cetaceans are removed from a free-swimming water environment (Cornell, 1978).

Temperature control is of paramount importance. Since most of a cetacean's body is enclosed within a layer of thick, insulating blubber, thermoregulation in the water is controlled through constriction or dilation of the peripheral vessels in the heavily vascularized pectoral flippers, tail flukes, and dorsal fin (Slijper, 1979). Consequently, cetaceans are less able to dissipate excess

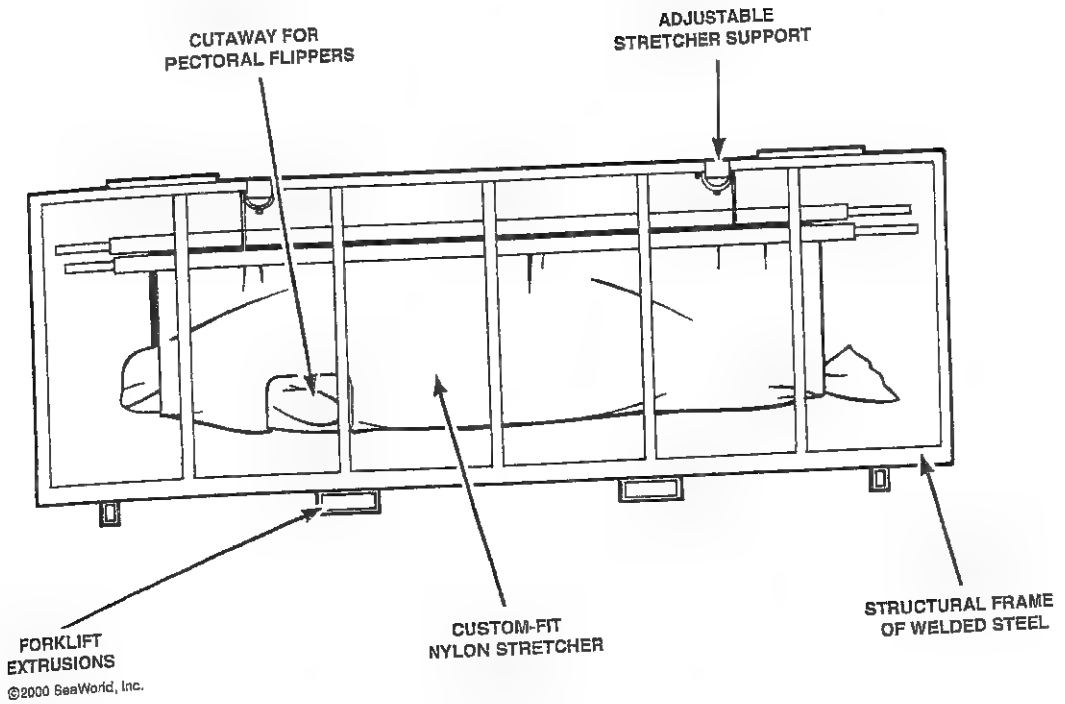


FIGURE 1 Beluga (*Delphinapterus leucas*) transport unit, side cutaway view. (Image courtesy of SeaWorld.)

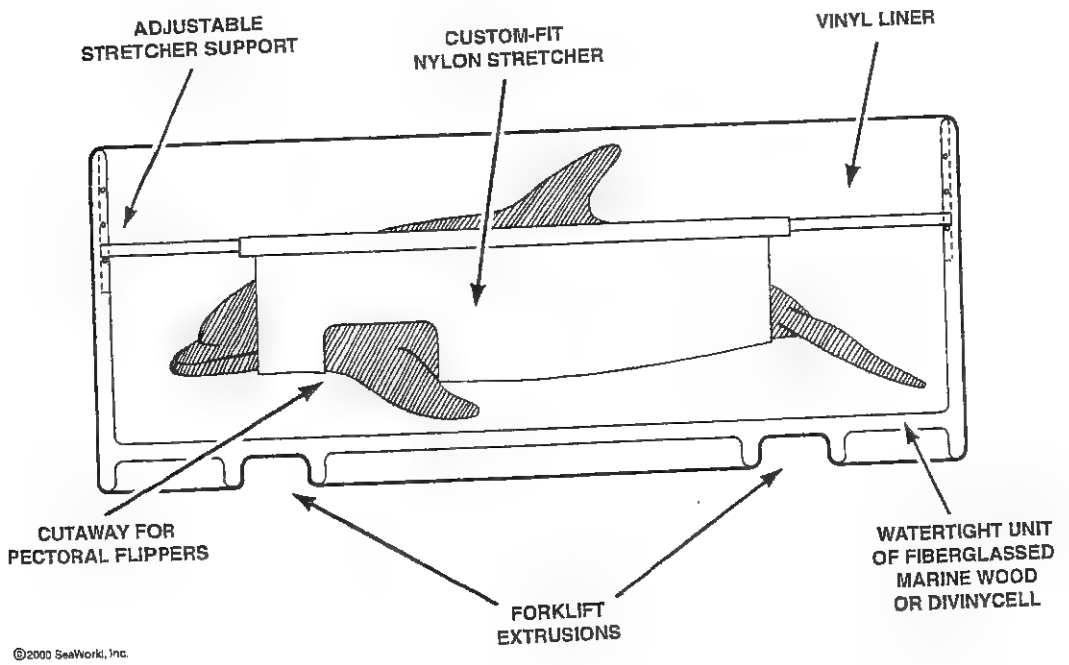


FIGURE 2 Bottlenose dolphin transport (*Tursiops truncatus*) unit, side cutaway view. (Image courtesy of SeaWorld.)

heat when removed from the water, due to the lower thermal conductivity of air. Thermoregulatory assistance can be provided in several ways. Suspending the cetacean within a water-filled container will allow water temperature adjustments according to the animal's needs. In an aircraft or enclosed-truck transport, the interior temperature may also be adjusted. It is best to conduct overland cetacean transports in open trucks at night or on overcast days to prevent sunburn. If this is not possible, light, moistened towels may be placed over the cetacean's skin to prevent sunburn and desiccation.

In early years, much of the difficulty in transporting cetaceans was due to equipment failures. Most failures can be avoided through proper planning and thorough preparation. Therefore, based on the possibility of problems, there must always be contingency plans to ensure the welfare of the animals being transported. Such plans require adequate personnel and equipment, either to return cetaceans to holding facilities if the transport is aborted, or to care for the animals if a delay occurs at an unexpected location. Certainly, the transport should be canceled if there are no contingency plans prepared to manage significant delays.

Animal health problems resulting from early, unsophisticated cetacean transports included muscular stiffness upon return to water, depression of appetite, anemia as a result of abrasions, pressure necrosis, and respiratory infections. Because of the improved transport techniques used today, which provide appropriate water temperatures and allow for lateral and vertical flexion, muscular stiffness can be minimized, and usually disappears within a few hours to a few days, or is avoided entirely. Now, properly transported cetaceans resume feeding immediately upon removal from their transport units, especially animals that have experienced transport previously. Abrasions and pressure necrosis are avoided through the use of fitted stretchers, nonabrasive materials, and proper positioning within the stretcher and transport unit. The utilization of modern rapid transport has decreased or eliminated the previously common use of antibiotics and corticosteroids for the prevention and treatment of transport-related respiratory infections. Proper support equipment, well-trained, experienced personnel, and strict attention to logistical details are important factors influencing the success of any cetacean transport.

A thorough assessment of the health status of the cetacean must be made prior to transport. Such an assessment should include behavioral observations, a physical examination, hematological examination, and, if possible, urinalysis. Cetaceans are generally not fed for 24 hours prior to shipment to minimize the volume of body wastes discharged into the transport container. Fasting may also reduce the incidence of regurgitation during transit.

The initial step in cetacean transport is lifting the whale or dolphin from its pool or holding facility in a custom-fitted stretcher made of soft material, generally nylon or canvas. These stretchers may be lined with wool or chamois, if desired, to minimize the possibility of abrasion. Stretchers must be constructed according to accurate measurements of the body of the individual cetacean to ensure proper fit and provide equal distribution of body weight along the stretcher. Paired openings in the stretcher allow the pectoral flippers to extend in an unrestricted, natural position (Ridgway, 1972; Cornell, 1978). The animal is positioned in the stretcher so that pressure is not increased on specific points along the body or flippers, which might lead to pressure necrosis or abrasion. During loading, every effort must be made to avoid abrading the highly vascularized skin of the cetacean. The danger of pressure necrosis is greatest in the axillary region (region just posterior to the insertion of the pectoral flippers). Metal poles supporting the stretcher must be sturdy enough to support the weight of the cetacean, even if the weight suddenly shifts. The pole ends should be rounded or covered with caps to eliminate sharp edges. Rope, nylon webbing, chain, or vinyl-covered steel cable may be used to connect the stretcher poles to the lifting crane. Eyebolts on the stretcher poles where the lifting tackle is attached should be padded to prevent lacerations and abrasions to both cetaceans and personnel. When engaged through the eyebolts, lifting hooks must face away from the animal. Body surfaces likely

be exposed to the drying effects of air may be covered with a protective ointment or kept wet
spraying or dousing with water to prevent desiccation (Cornell, 1978).

A crane is required to lift most cetaceans safely because of their weight and the possibility that ey may move while being lifted. Therefore, the crane's lifting capacity must be equal to the iimal's weight plus an acceptable safety factor. At the location of the cetacean lift, the supporting irface should be inspected and all details of the lift must be discussed with the crane operator. ydraulic cranes are preferred over mechanical cranes because they operate more smoothly. or safety, a cetacean must be kept as low to the ground as practical during all phases of the ft. Tags and/or guidelines must be attached to the stretcher, not to the eyebolts, where they iight bind with lifting tackle. When lifting small cetaceans (<400 kg; <880 lb) two tags or uidelines should be used. These should be attached to the stretcher poles on opposite ends. or large animals (>400 kg), four lines should be used, two at each end attached directly to ie stretcher poles. Guidelines should be attended during all phases of the lift to control inwanted motion.

Once fitted into its custom stretcher, the cetacean is lowered into a watertight transport unit if appropriate size, allowing the animal clearance from the ends, sides, and bottom of the ransport unit. Transporters currently in use at Sea World are constructed of fiberglass-covered oam, or polyvinyl chloride sheet stock (Divinycell®, DIAB, Inc., DeSoto, TX, and DIAB nternational, Laholm, Sweden), or marine plywood. Some of these transport units are rein-orced and protected by a steel frame. A removable lining of vinyl is installed on the inside walls of the transport unit to prevent abrasions. Lids or baffles are secured over both ends of he unit to reduce the possibility of water spillage. A stretcher support system may be incor-porated into transport units to enable attendants to adjust the position of the animal easily by raising or lowering the stretcher poles during loading or transport (Figures 3 and 4).

Once positioned within the transport unit, sufficient fresh water is added to submerge the lower 2/3 to 3/4 of the animal's body. It is recommended that salt water not be used, because of potential damage to aircraft components if spillage occurs. Suspension in water provides cooling and buoyancy, permitting exertion-free respiration throughout transport. If transported in an adequately supported posture, there should be little or no detectable variation in respiratory rhythm during transport (Lilly, 1961; Cornell, 1978). The temper-ature of the water in the transport unit should be the same or close to the temperature to which the cetacean is habituated. If the cetacean is being moved from water of one temper-ature to a different temperature, it is best to have the water in the transport unit at a temperature between the two. If the ambient air temperature is significantly warmer than the temperature of the water in the transport unit, ice may be added to maintain the appropriate water temperature.

For ground transport, the planned route of travel must be examined ahead of time with attention to road conditions, such as overhead clearances (i.e., trees, electrical wires, low bridges), as well as any special limitations on weight or size. If the load is excessively heavy or overly wide, special permits may be required and must be obtained in advance of transport. A whale transport unit is usually carried on the back of a flatbed or lowboy trailer pulled by a diesel tractor. It is best if the tractor is equipped in a manner that the exhaust is directed toward the road surface to minimize exposure of the animals and human attendants. A spare tractor should accompany the transport caravan as assurance against delays due to tractor malfunction.

Attendants accompanying the cetacean transport unit must be briefed prior to transport concerning all aspects of safety. A special permit allowing attendants to ride on the back of trucks may be required in some areas. Escort vehicles may precede and follow the caravan, and communications between all vehicles in the convoy can be maintained using radios or cellular phones. In many areas, notifying the appropriate authorities (i.e., police, highway patrol) of the

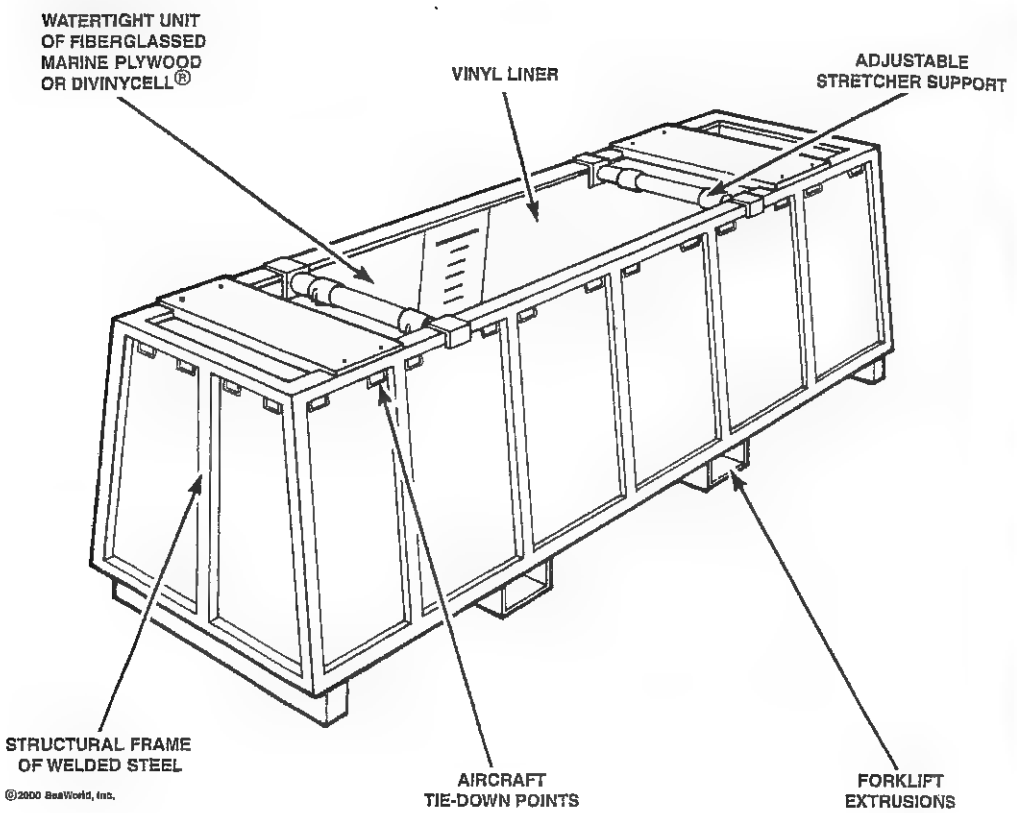


FIGURE 3 Beluga transport unit. (Image courtesy of SeaWorld.)

planned move and route will aid ground transport and may eliminate traffic delays. An on-the-ground logistical team formed prior to transport can help coordinate communications among involved staff (i.e., husbandry, administration, media interest) at the time of transport itself.

Most recent long-distance cetacean transports have involved the use of aircraft. Large cargo aircraft are preferred because of the size and weight of the cetaceans and their transport units. However, a major problem encountered over the years has been the relatively small size of many aircraft cargo doors. It is essential prior to transport to confirm that the transport unit and associated equipment will fit easily through the cargo door of the transport aircraft. Accurate weights on the animal transport units and other support equipment must also be obtained, so the aircraft can be balanced properly. Additionally, the aircraft needs to have provisions to secure the load safely to prevent shifting during flight. If, in transporting marine mammals, one uses a local airport regularly, it may be of help to brief airport and air carrier service personnel periodically, either in person or by written correspondence.

Depending upon the size, weight, and configuration of the transport unit, various types of loading and unloading equipment may be used, including platform loaders, forklift trucks, and cranes. Platform loaders and forklift trucks decrease loading time, but are not always available with adequate lifting capacity and often must be scheduled in advance. Mechanical problems or inclement weather might necessitate landing at an alternative airport rather than the originally scheduled destination. For these reasons, large cetacean transport units should be designed and constructed for lifting by a crane, since one is usually available on short notice. However, crane companies frequently will not have the proper equipment to lift large cetacean transport units safely, making it essential that tackle such as steel cables, spreader bars, and

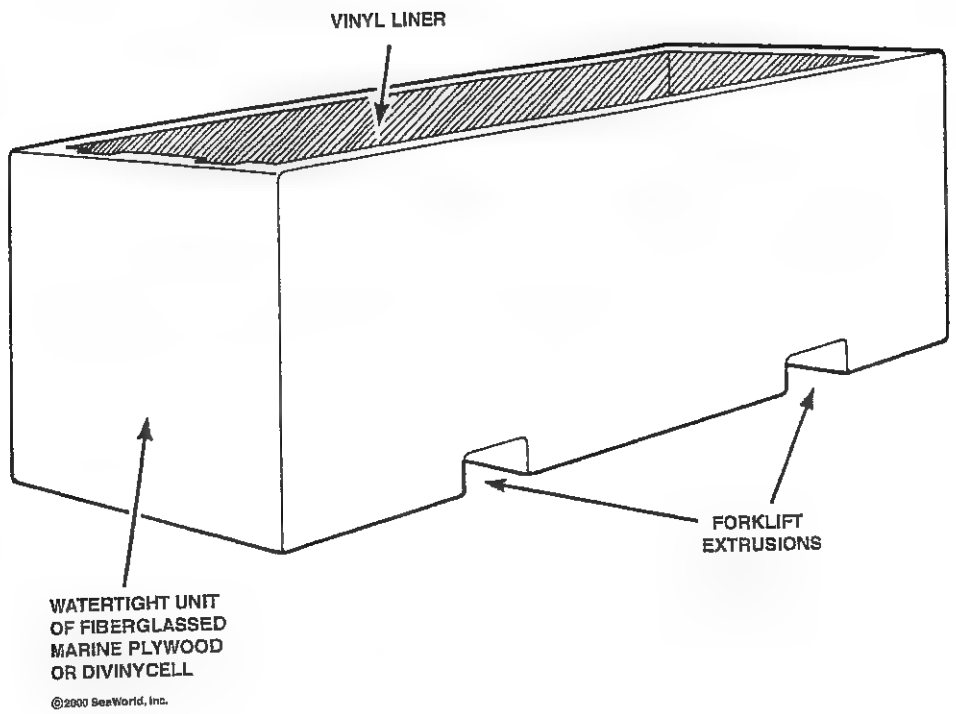


FIGURE 4 Bottlenose dolphin transport unit. (Image courtesy of SeaWorld.)

shackles accompany transport units at all times. Animal care ground personnel should remain at the airport until the transport aircraft takes flight, since occasional mechanical problems have required deplaning or have caused takeoff delays.

Attendants accompanying the cetacean air transport may need to brief the flight crew before takeoff regarding the appropriate angle of takeoff and descent (both of which should be as gradual as possible to avoid spillage from the transport unit), as well as cabin pressure and air temperature. Since cetaceans appear to be susceptible to the effects of high-altitude sickness (acute mountain sickness), it is recommended that the altitude or pressure inside the aircraft be maintained to the equivalent of 1067 m altitude (3520 ft) or less. Keeping the cabin air temperature the same as the temperature of the water in the transport unit will avoid any unwanted temperature loss or gain.

U.S. federal regulations specify most marine mammals be attended during transport, yet do not specify how many attendants are required. It is recommended there be at least one experienced attendant for each transported cetacean. This person should not only be experienced in animal husbandry, but also have emergency medical equipment on-site, and know how to use it, should it become necessary. The experienced attendant will also ensure close attention to each animal's behavior, which can lead to early detection of abnormalities in respiration, posture, and activity level, and thereby provide attendants who can rapidly correct problems. Attendants should have ready access to personal protective equipment (i.e., rain gear, wet suit, waders) to aid in animal repositioning should it be necessary during transport. Attendants can also prevent desiccation of the cetacean's skin and the subsequent development of "hot spots," which later blister and slough, by regularly wetting exposed skin with water.

Appropriate equipment for unloading and ground transport is necessary at the destination airport. Such equipment must be in position at the airport prior to the arrival of the aircraft to avoid delays.

Upon arrival at the final destination, the cetacean is removed from the transport unit while still suspended in its fabric stretcher, lowered into a pool of water, and released. Such pools need not be shallow or small, but plans and equipment should be available in case the transported animal needs assistance, immediately following release or in subsequent days.

Animals must remain under close observation for at least the first 24 hours following transport. Respiratory rates must be monitored and food offered frequently. Follow-up physical examinations and hematological examinations are prudent within the week following transport, or sooner if problems arise.

Pinnipeds

Pinniped transport is less complex than that of cetaceans because pinnipeds live a semiaquatic existence, and are able to tolerate long periods out of water if kept cool and/or moist. Cool air temperatures ranging from 5 to 13°C (41 to 55°F) are suggested if transported by air or enclosed truck, but not mandatory unless the pinnipeds are exhibiting evidence of discomfort or hyperthermia. If ground transport is utilized, provisions for cooling, such as ice and water sprays, are necessary during transport. Ice may be placed within the transport unit, providing a freshwater source and cooling for the animal. As an alternative, ice may be placed on top of transport containers to furnish a cooling drip during transport. As is the case with cetaceans, pinnipeds should be fasted for 24 hours prior to the move, and should not be fed during transport.

Transport containers need to be well ventilated, strong enough to contain the animal(s) being moved, and possess watertight bottoms extending at least 25 cm (10 in.) up the cage sides to prevent spillage of wastes and water. Any wood or metal used for cage construction must be free of sharp edges, splinters, or burrs on the interior surface. The openings in a wire or net mesh must not exceed 5 cm (2 in.) to prevent possible trauma during investigation or attempts to escape (Ridgway, 1972).

Pinnipeds may be transported singly, especially in the case of large or aggressive individuals, or as groups. It is best to avoid overcrowding, as it can lead to overheating. Cage dimensions must be large enough to allow the animal to turn around and exhibit normal posturing during transport. As with cetaceans, the presence of qualified attendants is required by U.S. law and is necessary to note and correct difficulties arising during transport. Depending on the size of the animal, net and gloves should be available if it is necessary to do something to the animal during transport.

Sea Otters

Sea otters, unlike cetaceans and pinnipeds, have a high metabolic rate and need to be fed well-refrigerated food items such as clams and shrimp before and during transport. Due to this high metabolic rate, sea otters are as temperature sensitive during transport as cetaceans, maintaining primary thermoregulation through flipper contact with water. Therefore, a layer of ice must be placed on an elevated, draining cage floor, to serve as a source of fresh water and cooling.

Sea otter transport cages may be constructed of wood, fiberglass, or smooth metal with mesh side panels, allowing good ventilation and unobstructed observation. The use of nylon netting instead of metal mesh for the side panels has minimized dental damage. A perforated floor can be placed above the waste-containing watertight cage bottom allowing uneaten food, feces, and urine to fall through. Cage bottoms should be removable, allowing emptying of waste during transport (Fitz-Gibbon and Hewlett, 1984). Plastic sky kennels are not recommended, because they provide inadequate ventilation, and otters may break teeth on the steel mesh door or

side vents. Furthermore, sky kennels promote fur soiling by forcing the otter to lie in its own waste products. Cage size must be large enough for the otter to turn around and groom freely. The presence of an attendant is required by U.S. law and is as imperative for sea otters as it is for pinnipeds and cetaceans. Thermoregulatory status must be constantly monitored as hyperthermia is the greatest obstacle to successful sea otter transport. Lethargy, panting, and flippers warm to the touch are all signs of overheating in sea otters. If the otters become too warm, spraying with cool water is helpful. It is important to keep a sea otter's fur as clean as possible during transport. Soiled fur can be gently rinsed with a freshwater sprayer.

Sirenians

Transport of sirenians is less complex than that of cetaceans, pinnipeds, or sea otters, because they actually require and are tolerant of warmer temperatures. Transport appears to be best accomplished using a temperature-controlled (18 to 23°C; 64 to 73°F) truck or airplane. Current IATA regulations stipulate both manatees and dugongs be transported in the same manner and using the same containers as cetaceans (International Air Transport Association, 1999).

Manatees are easily transported out of water on soft, closed cell foam in a watertight container constructed of fiber-glassed Divinycell® or marine plywood. These containers should be slightly larger in length and width than the manatee, to enable the animal to make normal postural adjustments. Initially, animals may move around considerably. However, they soon settle down and begin resting comfortably in a ventral, lateral, or dorsal position. During air transport, standard nylon aircraft tie-down straps are used over the open tops of the containers to avoid any vertical movement of the animals that may be caused by air turbulence. Freshwater spray can be applied throughout the transport process to aid in cooling. Manatees do not require feeding during transport because of their slow metabolic rates. Fasting prior to transport produces a negligible change in waste output. Any solid stool passed during transport must be removed in a sanitary manner.

Polar Bears

Transport of polar bears requires metal caging sturdy enough to contain and support the bear safely with a watertight cage floor to catch waste. Polar bears are best transported during cool weather. Aircraft cabin or enclosed trailer temperatures should be maintained below 13°C (55°F) during flight or ground transport. If a segment of the route involves transport outside a refrigerated vehicle, ice must be provided either within or on top of the cage. This ice can also provide a freshwater drinking source in extended transports. Food is not necessary during transport. Upon arrival, it may be a few days before the animal becomes acclimated enough to begin feeding.

Although tooth breakage is a possibility, it is unwise to tranquilize polar bears during transport, because thermoregulatory mechanisms may be compromised. To promote calmness, consider conducting the transport in darkness. Despite the lack of requirement by U.S. law, an attendant can assure the polar bear is maintained at a comfortable temperature and can protect bystanders from unwanted contact.

Additional Medical Considerations

Animals that have never been transported before should be given the opportunity to become familiar with the transport container. This means allowing the animal to enter the container

or a similar unit in a way that allows it to become accustomed to the container prior to transport. In the case of cetaceans, this means arranging to put the animal into a stretcher and loading it into the water-filled transport unit. Allowing the animal to become desensitized to the transport device before the actual event is well worth the investment in time and effort. This makes the process less stressful for the animal, and also allows the transport staff to become aware of the type of behaviors to be expected.

Prior to transport, a decision must be made regarding sedation. If the animal is expected to travel without difficulty, pre-transport sedation is unnecessary. If there is uncertainty, one may administer an oral dose of diazepam (Valium®, Roche Pharmaceuticals, Exton, PA) 30 to 60 min before any transport-related activities are apparent to the animal (see Chapter 29, Anesthesia, and Chapter 31, Pharmaceuticals). In the case of cetaceans, this means before the pool water is lowered or before the animals become aware of any other unusual activity or atypical accumulation of people. In spite of the fasting recommendations, the oral administration of diazepam does not seem to produce any problems. In manatees, pre-transport administration of sedation would most likely be given by intramuscular injection. If during the transport, the animal's activity is deemed to be potentially threatening to its health, appropriate sedation should be administered. Diazepam or midazolam (Versed®, Roche Pharmaceuticals, Exton, PA) alone, or in combination with meperidine/pethidine (Demerol®, Sanofi Winthrop Pharmaceuticals, Overland Park, KS), has been the most widely used for transport sedation. Dosages are discussed in Chapters 29 (Anesthesia) and 31 (Pharmaceuticals).

During a transport, the availability of refrigerated food fish may be helpful for the administration of oral medication. Offering fish can also provide a useful diversion for an animal upset by transport activities. As mentioned previously, the use of vinyl liners in cetacean transport units will minimize the possibility of skin abrasions. This is very important because most cetaceans demonstrate prolonged bleeding times from external wounds when in fresh water. In the event that an abrasion is hemorrhaging, ferric subsulfate (14% iron) (Medical Chemical Corporation, Torrance, CA; or Kwik-Stop, Arc Laboratories, Atlanta, GA) applied topically is usually effective. Yunnan Paiyao® (Yunnan Paiyao Factory), a Chinese herbal medication, applied topically or given orally, also appears to be useful for decreasing bleeding time.

Occasionally during air transport of cetaceans, dramatic elevation of respiratory rate will occur. The causes for this can range from life-threatening to insignificant. A dolphin may act as if it is experiencing mild colic. In most cases these signs are the result of flatus, which is relieved when the gas passes. Cetaceans experiencing apparent high-altitude sickness (acute mountain sickness) can exhibit similar symptoms. However, this condition does not go away untreated and is life-threatening. Maintaining control of cabin pressure appears the best method of dealing with this disease. Since previous attempts to treat altitude sickness in cetaceans have met with limited success, it is best to opt for prevention. A well-planned transport with appropriate equipment, executed in a professional manner, results in minimal requirement for medical intervention.

Conclusion

Safe, successful transportation of marine mammals may be routinely achieved with constant attention to detail and proper planning, preparation, communication, and execution. For cetaceans, care must be taken to ensure correct support of the animal while in transit. In the case of all marine mammals, and especially with sea otters, attention must be given to the thermoregulatory needs to prevent overheating. Competent attendants must be constantly aware of each animal's condition to ensure the animal is traveling comfortably. The logistics

of proper marine mammal transport must include, but not be limited to, adequate staffing, correct equipment, and appropriate scheduling and routing.

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CONTAINER REQUIREMENT 55

Applicable to:

Beluga	Narwhal
Dolphin species	Porpoise species
Dugong	Sea cow
Killer whale	Whale species
Manatee species	

1. DESIGN AND CONSTRUCTION

(see Exception QF-01 in Chapter 3)

Materials

Aluminium, canvas, fibreglass, foam rubber, plastics, PVC and wood.

Ancillary equipment — mechanical hand sprayer.

Principles of Design

The following principles of design must be met in addition to the General Container Requirements outlined at the beginning of this chapter.

Construct a waterproof box, made from wood with plastics liner, or wood and fibreglass, or moulded fibreglass, or construct a tubular aluminium frame with waterproof liner.

The size will permit one animal to be suspended in a stretcher of canvas or other suitable material supported on a foam rubber pad. Slits must be made in the stretcher to allow the flippers to protrude outside the stretcher. The marine mammal is accustomed to weightless environment in water and, therefore, when out of water may be unduly affected by gravity.

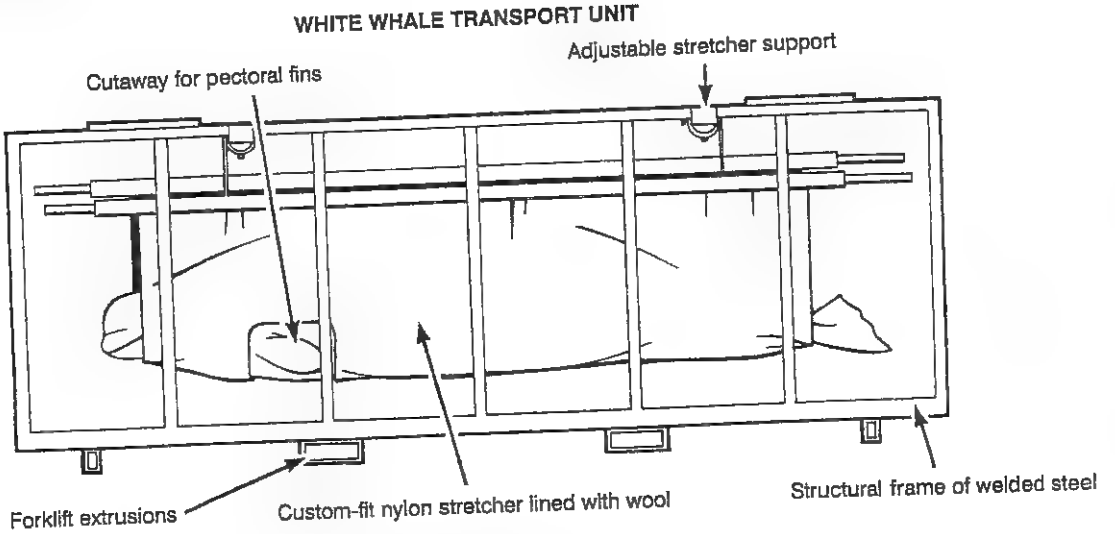
The container must be of adequate length to afford a minimum of 8 cm (3 in) of clearance at the head and tail for the animal.

The container must be of sufficient width to assure a minimum of 8 cm (3 in) of clearance between the stretcher bars and sides.

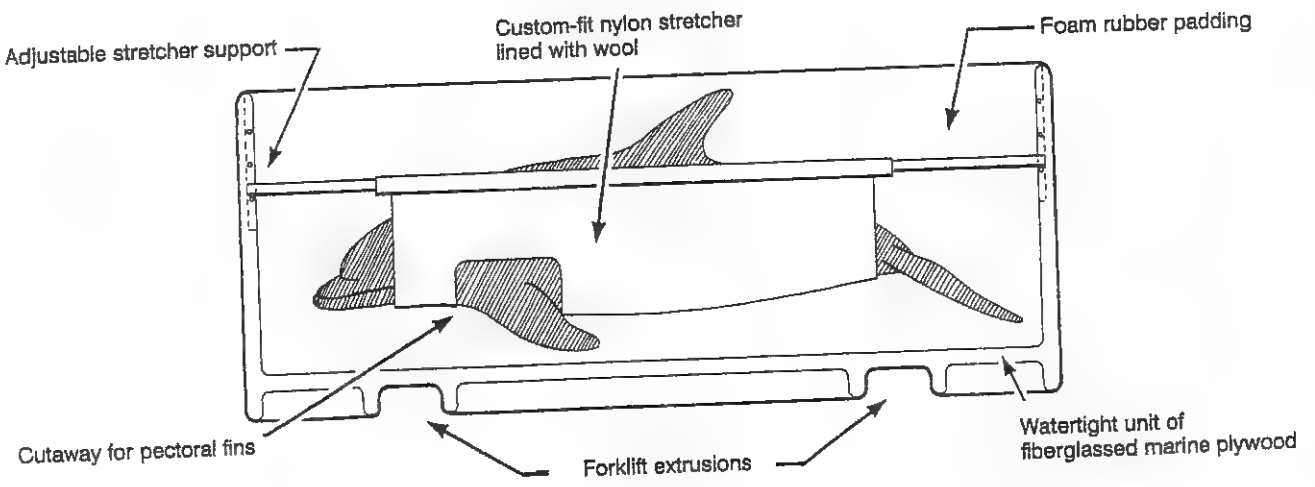
The container must be watertight.

EXAMPLE:

WHITE WHALE TRANSPORT UNIT



BOTTLENOSE DOLPHIN TRANSPORT UNIT



CONTAINER REQUIREMENT 55 *(cont'd)*

2. PREPARATIONS BEFORE DISPATCH
(see Chapter 5)

Critical areas of the body, e.g. under flippers, dorsal fin, tail fluke and head must be thoroughly covered with lanolin/petroleum jelly compound ointment, zinc oxide (or combination of each) to protect against over-heating by retaining moisture, if moisturising by the attendant during flight is not possible.

Padded restraining belts must be firmly but not forcibly, fastened over the animal to prevent violent jumps. With regard to the shipment of manatees, special restraining straps must be used to prevent rolling.

3. FEEDING GUIDE

No feeding is required during transportation.

4. GENERAL CARE AND LOADING

An attendant is required who must have access to the animal(s) at all times.

No attendant must be in care of more than four animals.

Attendant must have mechanical hand sprayer available.

Water must not be sprayed over the head of the animal nor near the breathing hole (blowhole), or in the case of the manatee or dugong, nostrils.

Aquatic mammals carried in slings travel better when loaded transversely across the aircraft.

CONTAINER REQUIREMENT 56

Applicable to all live corals, including the orders antipatharia, scleractinia and classes alcyonaria and hydrozoa.

Note: *This container requirement must not apply to rock devoid of live coral.*

1. DESIGN AND CONSTRUCTION

Materials

Cardboard, fibreboard, or other equivalent outer container material. Expanded polystyrene, styrofoam, or other equivalent insulating material.

Principles of Design

The following principles of design must be met in addition to the General Container Requirements outlined at the beginning of this section.

Outer Container

The outer container must be constructed of corrugated cardboard, expanded polystyrene, styrofoam, or other equivalent packaging material strong enough to contain the weight of water and resist crushing during transport. The inner surface of the outer container must be smooth and non-abrasive.

Inner Container

Requirements of live corals: Strong plastic (polyethylene or equivalent) bag or other equivalent container large enough to accommodate the specimen and deep enough so that it can be sealed to prevent leakage. The bag must be able to be opened and resealed without endangering the animals within. It is preferable that the bag(s) be placed in an outer bag of similar size so as to prevent water leakage.

Insulation/Cushioning

Expanded polystyrene or styrofoam contained of at least 1.25 cm (½ in) thickness on all sides must be provided. Other equivalent suitable insulating materials may be used.

2. PREPARATIONS BEFORE DISPATCH
(see Chapters 5 and 6)

Shippers are advised to pack one piece per inner container (see Dry Method for exceptions). Bags must be packed carefully so as to minimise crushing during transport.

Recommended Methods of shipping Live Corals

Wet Methods *(not suitable to all species)*

(a) Animals must be placed in strong transparent plastic bags or equivalent containers large enough to accommodate the specimens. The inner bag must be filled with water adequate enough to submerge the specimens. The remainder of the bag must be filled with oxygen. It is preferable that each bag is placed in an outer bag to prevent water leakage. Newspaper or other material may be used between the bags to minimise punctures.

(b) Corals can be attached to a "float" and then placed into plastic bags or equivalent containers with adequate water to flat the specimen.

Appendix B



1060 North Aurora Road • Aurora, Ohio 44202
(330) 562-7131 • Fax (330) 562-7020
www.sixflags.com

Ann D. Terbush
Chief, Permits Division
Office of Protected Resources
National Marine Fisheries Services
1315 East-West Highway, Room 13705
Silver Springs, MD 20910-3226

Dear Ms. Terbush:

This letter is in reference to the permit application for the import of one killer whale, by Funtime, Inc. d/b/a Six Flags Worlds of Adventure. I am a licensed veterinarian in the state of Ohio and have experience and knowledge in the field of marine mammal medicine and care.

Discussions and preparations for this animal transport are currently being held with all involved parties. A thorough review of the preparations will be conducted prior to the transport. Moreover, the transport will comply with APHIS regulation 9 CFR 3.116, Care in transit. A complete and appropriate transport plan will be developed and maintained on file at the facility. Funtime, Inc. veterinary staff will do a complete review of the animal's medical history prior to the transport. Standard medical evaluation techniques will be used.

I certify that the professional animal care and veterinary staff have reviewed the methods for transport, the facilities, and the continued care of the killer whale. Funtime, Inc. staff will acclimate with the animal at the Marineland S.A. facility prior to the transport, as well as, the staff from Marineland S.A. will help acclimate the animal at the Funtime, Inc. facility. The methods and facilities described will adequately provide for the well-being of the killer whale.

Sincerely,

Tobi Pledger

Tobi Pledger, DVM
Staff Veterinarian

Marineland

October 17th, 2001

TO WHOM IT MAY CONCERN

This is to confirm and certify that the female Killer Whale, *Orcinus orca*, known as "SHOUKA", was born on February 25th 1993 in Marineland's pools in Antibes, France.

She was conceived in our institution, her father is "KIM", who arrived at Marineland from Iceland in 1983 and her mother is " SHARKANE", who arrived from Iceland in 1990.

" SHOUKA", was the first of the four successful births that Marineland has had up to date.

Marineland S.A.

S.A. MARINELAND
306, Av. Mozart
06600 ANTIBES
Tél. 04 93 33 49 49

Mike Riddell
Directeur Général

PRÉFECTURE DES ALPES-MARITIMES

Tél. 93.72.20.00

06286 NICE CEDEX 3, le

DIRECTION de la RÉGLEMENTATION

Bureau de la Police Générale

Chef de Bureau Mme JEANNETTE

Références à rappeler :

MF/GL 15.03.96

Affaire suivie par :

Mme FARAUT n°11286

Le PREFET des ALPES-MARITIMES
CHEVALIER de l'ORDRE NATIONAL du MERITE-

VU la loi n° 76-629 du 10 juillet 1976 relative à la protection de la nature et notamment son chapitre 1er ;

VU la loi n° 76-663 du 19 juillet 1976 modifiée, relative aux installations classées pour la protection de l'environnement et notamment son article 7 ;

VU le décret n° 77-1297 du 25 novembre 1977, pris pour l'application de la loi n° 76-629 du 10 juillet 1976 relative à la protection de la nature et concernant les établissements détenant des animaux, notamment ses articles 6 et 7 ;

VU le décret n° 77-1133 du 21 septembre 1977 modifié, pris pour l'application de la loi n° 76-663 du 19 juillet 1976 relative aux installations classées pour la protection de l'environnement et notamment son article 17 ;

VU l'arrêté du 21 août 1978 relatif aux règles générales de fonctionnement et au contrôle des établissements présentant au public des spécimens vivants de la faune locale ou étrangère ;

VU l'arrêté du 21 août 1978 relatif aux caractéristiques auxquelles doivent satisfaire les installations fixes ou mobiles des établissements présentant au public des spécimens vivants de la faune locale ou étrangère ;

VU l'arrêté du 24 août 1981 relatif aux règles de fonctionnement, au contrôle et aux caractéristiques auxquels doivent satisfaire les installations abritant des cétacés vivants ;

VU l'arrêté préfectoral en date du 7 septembre 1982 autorisant la société MARINELAND à exploiter à ANTIBES un zoo marin ;

VU la lettre en date du 4 octobre 1995 de M. Michael RIDDEL, directeur général du Zoo Marin MARINELAND, faisant état des transformations et modifications des installations ;

RÉPUBLIQUE FRANÇAISE

VU l'avis du conseil départemental d'hygiène lors de sa séance du 9 février 1996 ;

CONSIDERANT que le pétitionnaire ayant été informé selon les modalités fixées par les articles 10 et 11 du décret n° 77-1133 du 21 septembre 1977, a admis les prescriptions imposées par le conseil départemental d'hygiène ;

SUR la proposition de M. le secrétaire général de la préfecture des Alpes-Maritimes,

A R R E T E

ARTICLE 1er : Le zoo marin MARINELAND sis avenue Mozart - 06600 ANTIBES, est autorisé à exploiter, conformément au plan et dossier joints à la déclaration et sous réserve des prescriptions du présent arrêté, un bassin destiné à l'hébergement d'une vingtaine de requins.

Toutes transformations dans l'état des lieux et toute modification de l'installation, de son mode d'utilisation devront être portées à la connaissance du préfet, avant leur réalisation.

ARTICLE 2 : l'établissement devra être conforme aux prescriptions concernant les établissements abritant des cétacés édictées par l'arrêté ministériel du 24 août 1981 et ci-jointes.

ARTICLE 3 : les animaux détenus seront au nombre maximum de :

12	dauphins *(Tursiops Truncatus)*
5	orques *(Orcinus Orca)*
20	otaries à crinière *(Otaria Byronia)*
10	otaries de Californie *(Zapophus Californianus)*
10	phoques veau marin *(Phoca Vitulina)*
10	phoques gris *(Halichoeus grises)*
4	éléphants de Mer du Nord *(Mirounga Angustirostris)*
2	éléphants de Mer du Sud *(Mirounga Leonida)*
50	manchots
20	requins de grande taille
15	requins de petite taille
10	tortues

Le peuplement des aquariums comptera au maximum :

- 1000 spécimens de moins de 50 grammes
- 100 spécimens de 0,1 à 3 kg

.../..

ARTICLE 4 :

1) la contenance minimale du bassin de présentation sera de :

- dauphins	2 000 m3 (804 m2)
- orques	10 500 m3 (1550 m2 + 500 m2)
- otaries adultes	700 m3 (500 m2)
- petites otaries ou otaries de Californie	150 m3 (350 m2)
- phoques	200 m3 (600 m2)
- éléphants de mer	250 m3 (300 m2)
- requins ou gros poissons	2 300 m3

2) le bassin d'isolement devra avoir un volume minimal de 80 m3.

ARTICLE 5 : milieu aquatique

Tous les bassins et aquariums seront alimentés en eau de mer conformément aux conditions générales fixées par l'arrêté préfectoral du 27 septembre 1994 autorisant le pompage en mer. Le PH de l'eau doit être celui de la mer Méditerranée.

L'eau doit être additionée de chlore en quantité suffisante pour maintenir une concentration de 0,1 à 0,4 ppm.

Pour les bassins contenant des cétacés, une mesure de chlore total et du chlore combiné sera réalisée plusieurs fois par jour (minimum 4).

Pour ces mêmes bassins, des contrôles sur les paramètres suivants : DCO, MES et ammoniaque (éventuellement par chlorométrie) seront réalisés une fois par mois, ainsi que les contrôles bactériologiques.

Les résultats seront adressés chaque trimestre à M. le directeur départemental des services vétérinaires, inspecteur des installations classées.

Le renouvellement de l'eau se fera par recyclage permanent par voie interne grâce à un système de filtration par filtres de sable et complété, le cas échéant, par des dispositifs tels que stérilisation par ultra violet ou écumeur fonctionnant à l'air ozoné et par un renouvellement d'une partie du volume total d'eau des bassins, par pompage en mer conformément aux conditions générales fixées par l'arrêté préfectoral du 27 septembre 1994 autorisant une double canalisation de pompage et de rejet de l'eau de mer destinée à l'alimentation des bassins de l'établissement MARINELAND.

.../..

Les eaux usées contenant les excréments seront aspirées au fond des bassins et après traitement à l'eau de javel, seront rejetées :

- en mer à l'aide des installations autorisées par l'arrêté préfectoral du 27 septembre 1994 (double canalisation de pompage et de rejet de l'eau de mer destinée à l'alimentation des bassins) ;

- au réseau communal d'assainissement, lors de l'emploi d'écumeur à air ozoné, par lavage à l'eau douce.

ARTICLE 6 : alimentation

Les aliments congelés seront conservés moins de 6 mois à - 18° C.

Les poissons devront être d'une qualité correspondant aux normes de la consommation humaine.

L'enregistrement des entrées et des sorties des lots d'aliments, ainsi que l'enregistrement permanent des températures du congélateur doivent être présentés en cas de contrôle. La décongélation doit être faite dans une pièce à éclairement par rayon ultra violet de 2537° A°, à l'effet bactéricide.

Le personnel doit éviter au maximum les contaminations bactériennes humaines lors des manipulations de poissons (lavage des mains, ports de gants). Ces dispositions devront être prévues par le règlement intérieur de l'établissement.

ARTICLE 7 : transport

Les transports de ces animaux doivent être réalisés sur brancards avec un système de pulvérisation humide, les orifices de l'animal étant laissés libres pour les excrétions. Les durées de transport sur le territoire métropolitain ne doivent pas excéder 24 heures.

ARTICLE 8 : contrôle sanitaire des cétacés.

Chaque animal devra être identifié par marquage d'un numéro par le froid.

Outre le livre de soins vétérinaires, l'établissement détiendra pour chaque cétacé un dossier ou carnet de santé qui indiquera, (outre les moyens d'identification) le cas échéant, les vaccinations, les rappels et les traitements antiparasitaires : au moins deux fois par an, il sera reporté la formule sanguine avec les indications suivantes : globules rouges, vitesse de sédimentation, éosinophiles, lymphocytes, hémoglobine, hématocrite, urémie, transaminase.

.../..

Des examens post mortem obligatoires seront pratiqués à chaque décès. Ils comprendront obligatoirement une autopsie détaillée avec la mise en oeuvre d'examens de laboratoires effectués par un laboratoire agréé par l'inspecteur des installations classées.

Les résultats de l'ensemble de ces interventions seront conservés cinq ans et présentés, à sa demande, au directeur départemental des services vétérinaires, inspecteur des installations classées.

ARTICLE 9 : évacuation des eaux usées

1) les eaux usées des bassins :

Les bassins seront conçus de manière à éviter la pénétration d'eaux de ruissellement.

Les flux rejetés dans le milieu naturel ne doivent pas dépasser :

* 10 kg de MES par jour
* 36 kg de DCO par jour
* 10 kg de NTK par jour

pour un débit de 1000 m3.

Une filtration des eaux usées sera effectuée avant le rejet dans le milieu naturel.

2) les eaux usées des autres installations (W.C. sanitaires) du personnel et du public seront évacuées par un réseau séparé, raccordé à l'égout public.

ARTICLE 10 : sont interdits les manèges, attractions ou autres installations de loisirs qui, par leur volume ou leur hauteur, seront susceptibles de porter atteinte au site.

ARTICLE 11 : l'arrêté préfectoral du 27 septembre 1982 est abrogé.

ARTICLE 12 : lesdites prescriptions sont applicables sous réserve des droits des tiers, tous moyens et voies de droit étant réservés à ces derniers pour les dommages que pourrait leur causer l'établissement dont il s'agit.

"DELAIS ET VOIE DE RECOURS (article 14 de la loi n° 76-663 du 19 juillet 1976) :

La présente décision ne peut être déférée qu'au tribunal administratif. Le délai de recours est de deux mois pour le demandeur ou l'exploitant. Ce délai commence à courir du jour où la présente décision a été notifiée".

.../..

ARTICLE 13 : Un extrait du présent arrêté, notamment les prescriptions auxquelles les installations seront soumises sera, aux frais du **Zoo Marin MARINELAND** inséré par les soins du préfet des Alpes-Maritimes dans deux journaux d'annonces légales du département et affiché à la mairie d'**Antibes** pendant une durée d'un mois à la diligence du maire d'**Antibes** qui devra justifier de l'accomplissement de cette formalité.

Le même extrait sera, en outre, affiché par le pétitionnaire dans son établissement.

ARTICLE 14 : M. le secrétaire général de la préfecture des Alpes-Maritimes est chargé de l'exécution du présent arrêté dont ampliation sera adressée à :

- M. le sous-préfet de Grasse,
- M. le maire d'Antibes,
- M. le directeur général du Zoo Marin MARINELAND,
- M. le directeur départemental des services vétérinaires, inspecteur des installations classées.

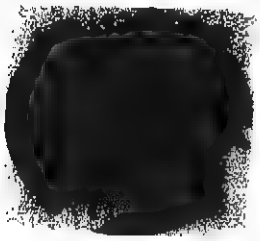
Fait à Nice, le 29 AVR. 1996

Pour le Préfet des Alpes-Maritimes
Le Sous-Préfet, Chargé de Mission
DACI-B35

Gérard FRANC

Pour AMPLIATION
Le Chef de Bureau
REG-EG2

C. JEANNETTE



Multinational Translating Svc.
928 Connetquot Avenue
Central Islip, NY 11722

"In any language, communication is our business"

CERTIFICATION

This is to certify that the information in the attached translated Decree and Regulations Concerning the Operation of MARINELAND is true and correct. The document was translated from the original French into English on October 25, 2001, by Ms. Régine McCullough, Translator ID# 1068. Ms. McCullough is fluent in French and English, and is a registered translator and interpreter with Multinational Translating Service.

Signed: Lisa Alesci

Lisa Alesci, Partner
Multinational Translating Service, NY

County of Suffolk)
SS:
State of New York)

Sworn to before me this 25th day of October, 2001

Notary Public:

LEONARD P. CORAZZA
Notary Public, State of New York
No. 24-4835856
Qualified in Kings County
Commission Expires 2-28-2002

My Commission Expires:

Phone: 631-581-8856 - Toll-free: 877-442-1743 - Fax: 631-224-9435
E-mail: mtsvc@optonline.net - URL: www.mtsvc.qpg.com

PRÉFECTURE DES ALPES-MARITIMES
Tel. 93 72 20 00

DIRECTION de la RÉGLEMENTATION
Bureau de la Police Générale
Head of Department: Mme JEANNETTE

06265 NICE CEDEX 3, (date)

References to be quoted:
MF/GL 15.03.96

Le PREFET des ALPES-MARITIMES
CHEVALIER de l'ORDRE NATIONAL du MERITE

Follow-up by:
Mme FARAUT No. 11286

IN VIEW OF

Law No. 76-629 dated 10th July 1976 relating to the protection of nature and Chapter 1 thereof in particular;

Law No. 76-663 dated 19th July 1976 amended, relating to listed facilities with respect to the protection of the environment and Article 7 thereof in particular;

Order No. 77-1297 dated 25th November 1977 for the implementation of Law No. 76-629 dated 10th July 1976 relating to the protection of nature and to premises keeping animals, Articles 6 and 7 thereof in particular;

Order No. 77-1133 dated 21st September 1977 amended, for the implementation of Law No. 76-663 dated 19th July 1976 relating to listed facilities for the protection of the environment and Article 17 thereof in particular;

Decree dated 21st August 1978 relating to general operating regulations and monitoring of premises showing living specimens of local or foreign wildlife to the public;

Decree dated 21st August 1978 relating to features to which, fixed or mobile facilities of those premises showing live specimens of local or foreign wildlife to the public, must comply;

Decree dated 24th August 1981 relating to operating regulations, monitoring and features to which facilities housing live cetacea must comply;

Prefectorial Decree dated 7th September 1982 authorizing MARINELAND to operate a marine aquarium in ANTIBES;

Letter dated 4th October 1995 from Mr. Michael RIDDEL, Chief Executive Officer of MARINELAND Aquarium advising of conversions and modifications to the facilities;

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Translated from a copy of the original on 10/25/01
By: Ms Régine McCullough, Translator ID# 1068
Certification Attached

IN VIEW OF

The recommendation from the Regional Council for Hygiene during its meeting of 9th February 1996;

CONSIDERING that the petitioner had been informed according to the terms of Articles 10 and 11 of Order No. 77-1133 dated 21st September 1977, has accepted the instructions imposed by the Regional Council for Hygiene;

ON proposal by the General Secretary of the Prefecture of Alpes-Maritimes,

DECREE

ARTICLE 1: The MARINELAND Aquarium located at Avenue Mozart – 06600 ANTIBES, is authorized to operate, in accordance with plan and documentation enclosed with the declaration and the provisions of the present decree, a pool provided for housing approximately twenty sharks.

Any conversions of the inventory of fixtures and any modifications to the facilities and their usage must be brought to the attention of the Prefect before they are carried out.

ARTICLE 2: The premises must comply with instructions relating to premises housing cetacea which are stipulated in Ministerial Decree dated 24th August 1981 enclosed.

ARTICLE 3: The maximum number of animals kept will be:

12	Dolphins (Tursiops truncatus)
5	Killer whales (Orcinus orca)
20	Southern sea lions (Otaria byronia)
10	Californian sea lions (Zapophus californianus)
10	Common seals (Phoca vitulina)
10	Gray seals (Halichoeus grises)
4	Northern elephant seals (Mirounga angustirostris)
2	Southern elephant seals (Mirounga leonida)
50	Penguins
20	Large sharks
15	Small sharks
10	Turtles

The maximum population of the aquariums will be:

- 1000 specimens weighing less than 50 grams
- 100 specimens weighing 0.1 to 3 kg

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Translated from a copy of the original on 10/25/01
By: Ms. Régine McCullough, Translator ID# 1068
Certification Attached

ARTICLE 4:

1) The minimum capacity of the show pool will be:

-	Dolphins	2 000 m³	(804 m²)
-	Killer whales	10 500 m³	(1550 m² + 500 m²)
-	Adult sea lions	700 m³	(500 m²)
-	Small sea lions or Californian sea lions	150 m³	(350 m²)
-	Seals	200 m³	(600 m²)
-	Elephant seals	250 m³	(300 m²)
-	Sharks or big fish	2 300 m³	

2) The minimum volume of the isolation pool must be 80 m³

ARTICLE 5: Aquatic environment

All pools and aquariums will be supplied with seawater in accordance with general conditions stipulated in Bylaw dated 27th September 1994 authorizing pumping at sea. The water pH must be that of the Mediterranean Sea.

Chlorine must be added to the water in quantities sufficient to maintain a concentration of 0.1 to 0.4 ppm.

In respect of pools containing cetacea, a measurement of total chlorine and combined chlorine must be carried out several times a day (minimum 4).

For these same pools, tests on the following parameters : DCO, MES and ammonia (possibly chlorometry) will be carried out once a month, as well as bacteriological tests.

The results will be forwarded each quarter to the Regional Director of Veterinary Services, Inspector of Listed Facilities.

Water renewal will be done by way of internal continuous recycling using a filtration system with sand filters and completed where appropriate with devices such as UV sterilization or a scrubber operating with ozonized air and with a renewal of a part of the total volume of water contained in the pools, by pumping at sea in accordance with general conditions of Bylaw dated 27th September 1994 authorizing double piping for pumping and discharging sea water intended for the supply of pools in the premises of MARINELAND.

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By: Ms. Régine McCullough, Translator ID# 1068
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Waste water containing excrement will be pumped from the bottom of the tanks and after treatment with bleach, will be discharged:

- at sea using facilities authorized by Bylaw dated 27th September 1994 (double piping for pumping and discharging sea water intended for the supply of pools);
- local purification network, when using an ozonized air scrubber, and cleaning with fresh water.

ARTICLE 6: Food

Frozen food will kept at a temperature of –18° C for less than 6 months.

The fish will be of similar standards as for human consumption.

The recording of incoming and outgoing batches of food, as well as the continuous recording of the temperatures of the freezer must be provided in case of inspection. Defrosting must take place in a room lit with UV rays of 2537Å with bactericidal effect.

Staff must as much as possible avoid human bacterial contamination when handling fish (washing hands, wearing gloves). These measures must be provided within the internal regulations of the premises.

ARTICLE 7: Transport

These animals must be transported on stretchers fitted with a dampness spraying system, the animal's orifices left free for excretion. The duration of transport on metropolitan France must not exceed 24 hours.

ARTICLE 8: Health Control of cetacea

Each animal must be identified with a numbered tag (cold tagging).

In addition to the Veterinary Care Book, the premises will keep for each cetacean a health file or booklet which will include (in addition to the means of identification) where appropriate, vaccinations, boosters and antiparasite treatments: at least twice a year, the blood formula will be recorded with the following indications: red cells, sedimentation speed, eosinophiles, lymphocytes, hemoglobin, hematocrite, uremia, transaminase.

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Compulsory post-mortem examinations will be carried out for each death. They must include a detailed autopsy with the implementation of laboratory tests carried out by a laboratory approved by the Inspector of Listed Facilities.

The results of all these interventions will be kept for five years and provided on his request to the Regional Director of Veterinary Services, Inspector of Listed Facilities.

ARTICLE 9: Waste water discharge

1) Waste water from pools :
The pools will be designed so that there will be no penetration of run-off water.

The flows discharged in natural environment must not exceed:
- 10 kg of MKS per day
- 36 kg of DCO per day
- 10 kg of NTK per day

for an outflow of 1000 m^3.

Filtration of waste water must be carried out before discharging in the natural environment.

2) Waste water from other facilities (WC sanitation) for staff or the public will be discharged via a separate network linked to the public sewage system.

ARTICLE 10: Any rides, attractions or other leisure facilities, which, because of their volume or height would be likely to damage the site, are prohibited.

ARTICLE 11: Bylaw dated 27th September 1982 is repealed.

ARTICLE 12: The said instructions are applicable subject to the rights of any third party, any means and proceedings reserved to the latter for damages the premises in question could cause them.

"PERIOD OF APPEAL AND PROCEEDINGS (Article 14 of Law No. 76-663 dated 19th July 1976):

The present decision can only be referred to the administrative court. The deadline for appeal is two months for the plaintiff or the operator. This period of time starts from the day when the present decision has been notified."

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By: Ms. Régine McCullough, Translator ID# 1068
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ARTICLE 13: An extract from the present decree, in particular the instructions to which the facilities are subjected, will be, at the expense of MARINELAND Aquarium, inserted by the good offices of the Prefect of Alpes-Maritimes in two legal announcement newspapers of the area and displayed at the Town Hall of Antibes for one month duration at the behest of the Mayor of Antibes who will have to give proof of the fulfillment of this formality.

In addition, the same extract will be displayed by the petitioner in his premises.

ARTICLE 14: The Secretary General of the Prefecture of Alpes-Maritimes is responsible for the implementation of the present decree of which a certified copy will be forwarded to:

- the Ministerial Representative of Grasse
- the Mayor of Antibes
- the Chief Executive Officer of MARINELAND Aquarium
- the Regional Director of Veterinary Services, Inspector of Listed Facilities.

Issued in Nice, on 29th April 1996

For Certified Copies
Head of Department

C. JEANNETTE

On behalf of the Prefect of Alpes-Maritimes
Ministerial Representative, Representative

Gérard FRANC

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USDA

EXPIRATION DATE: FEBRUARY 27, 2002

United States Department of Agriculture

Marketing and Regulatory Programs

Animal and Plant Health Inspection Service

Animal Care

This is to certify that

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under the

Animal Welfare Act

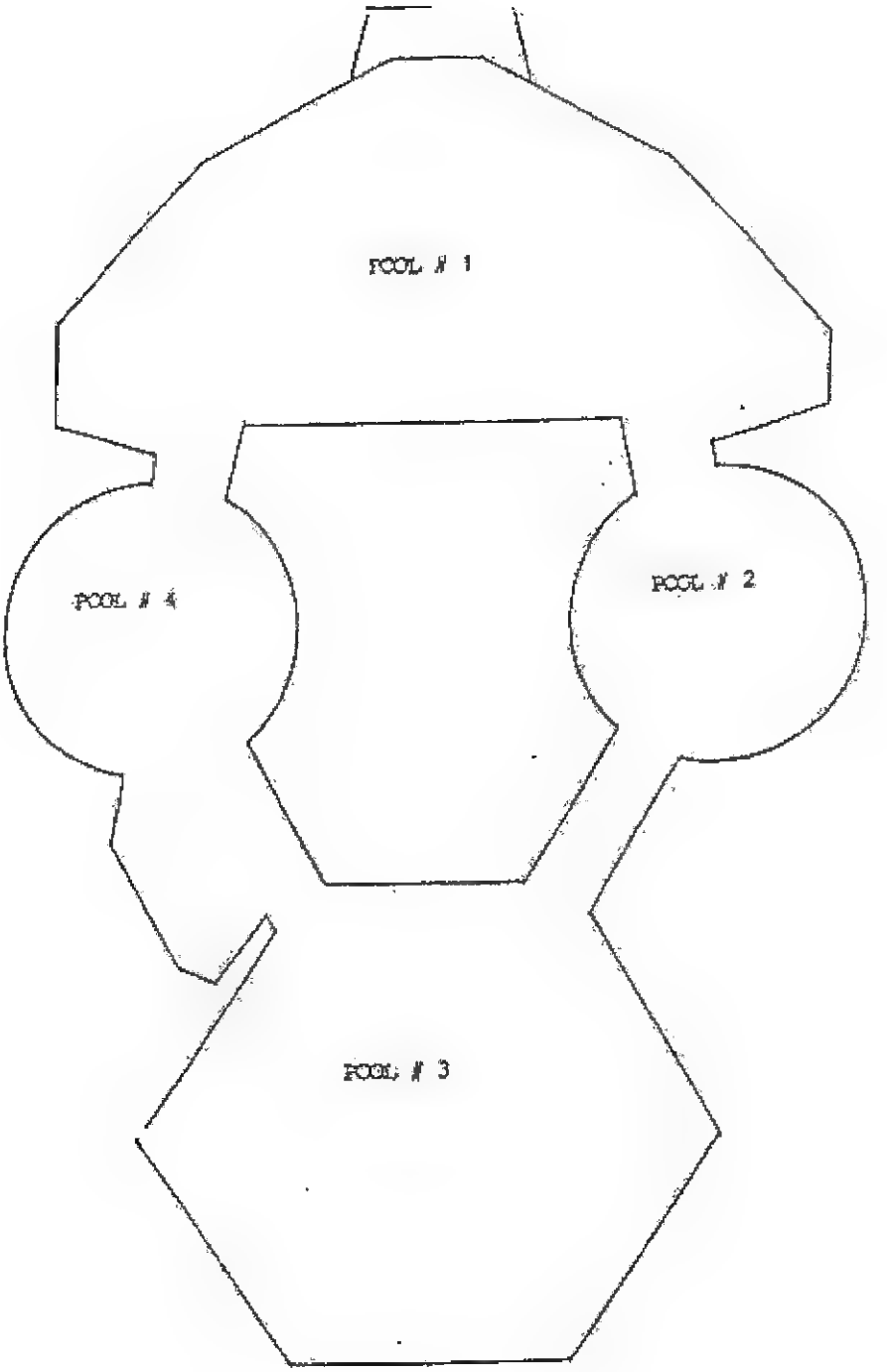
(7 U.S.C. 2131 et seq.)

Certificate No 31-C-0137

Customer No 13564

Deputy Administrator

APHIS FORM 7007 (NOV 99) *Previous editions are obsolete*



Marine Mammal Stadium

Pool #1	Length	97 ft	**Pool #3**	Length	65 ft.
	MHD	45 ft.		MHD	65 ft.
	SA	2,782 sq. ft.		SA	3,000 ft.
	VOL	66,823 cu. Ft.		VOL	42,876 cu. ft.
	Depth	15 ft sloping to 26 ft.		Depth	12 ft. sloping to 15 ft.
	Gallons	508,861		Gallons	327,573
Pool #2	Length	35 ft.	**Pool #4**	Length	35 ft.
	MHD	35 ft.		MHD	35 ft.
	SA	961.6 sq. ft.		SA	1,273 sq. ft.
	VOL	8,660 cu. ft.		VOL	9,828 cu. ft.
	Depth	9 ft. sloping to 10 ft.		Depth	8 ft.
	Gallons	66,250		Gallons	75,085

Subject: **[Fwd: Six Flags]**
Date: Mon, 29 Oct 2001 17:22:03 -0500
From: "Ann Terbush" <Ann.Terbush@noaa.gov>
Organization: NOAA
To: Gene Nitta <Gene.Nitta@noaa.gov>,
Jennifer Skidmore <Jennifer.Skidmore@noaa.gov>
CC: Dan Hytrek <Dan.Hytrek@noaa.gov>

Jim Gesualdi called earlier this afternoon from the airport, rather apologetically saying that Six Flags had had an "all-hands" meeting to announce the killer whale plans, and that NBC had already contacted them...so they decided to do a press release after all...I gave Connie the Six Flags PR information--she got a copy of the release, and is making us a copy. Their corporate PR person is Jeff Jouett--707-556-5227. So much for a "quiet process"!

-------- Original Message --------
Subject: Six Flags
Date: Mon, 29 Oct 2001 16:57:11 -0500
From: "Connie Barclay" <Connie.Barclay@noaa.gov>
To: Ann Terbush <Ann.Terbush@noaa.gov>

Ann: I contacted one of the public affairs people listed on the press release and encouraged her to add language, "pending federal approvals." I explained to her that we will respond to media calls by explaining the permit application process, and reminded her that this process takes several months. I told her that this is not a done deal. I've got a copy of the release for you. Thanks again for the heads up phone call. Connie
--
Connie M.J. Barclay
Public Affairs
(301)713-2370

Six Flags
WORLDS of ADVENTURE
Wildlife. Wild Rides.
1060 North Aurora Road • Aurora, Ohio 44202
(330) 562-7131 • Fax (330) 562-7020
www.sixflags.com

NOV 14 2001

October 29, 2001

VIA FACSMILE AND MAIL

Ms. Ann Terbush, Chief
Permit Division
Office of Protected Resources
National Marine Fisheries Service
SSMC #3 1315 East-West Highway
Silver Spring, MD 20910

Dear Ms. Terbush,

This is to thank you and your staff for taking the time to meet with respect to the marine mammal import permit applications submitted on October 29, 2001.

As discussed this is to confirm that Funtime, Inc. formally consents to the consolidation of the import permit applications for killer whales known as "Shouka" and " Kshamenk" as one unified application.

Thank you again for your time and consideration.

Very truly yours,

G. William Hughes,
Zoological Director

GWH:cat

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

JAN 28 2002

G. William Hughes
Zoological Director
Funtime, Inc.
Six Flags Worlds of Adventure
1060 North Aurora Road
Aurora, OH 44202

Dear Mr. Hughes:

This is a follow-up to our letter of January 9, 2002, which included copies of the public comments received regarding your permit application (File No. 1004-1656). Based on issues raised in the public comments, the following information needs to be provided to give NMFS sufficient information to determine whether to issue or deny your permit application:

- Further documentation of the circumstances regarding the beaching of Kshamenk and subsequent attempts for release (specifically, provide further evidence of the stranding and documentation from the Argentinean government that this animal is non-releasable);

- A statement regarding CITES export permits (preferably from the Management Authorities of Argentina and France, indicating that an export permit has been issued, or that the circumstances of the proposed export are likely to be consistent with applicable regulations);

- Additional information regarding the North American cooperative breeding program for killer whales referenced in the application, specifically addressing concerns expressed by commenters regarding cross-breeding killer whales from different populations;

- A description of the status of the killer whale stock in the waters off Argentina;

- The duration of truck transport from each of the facilities to the airport, transport from the airport to Six Flags Worlds of Adventure and the total flight time; and

- A statement from the attending veterinarian concerning transport sequence, acclimation times and quarantine procedures.

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Commenters have requested a public hearing; however we have determined that all necessary documentation to enable us to make a decision can be provided in writing. As we discussed with James Gesualdi on January 25, 2001, after we receive this additional information, we will initiate another 30 day public comment period with a publication of notice in the Federal Register. We have referred a number of other comments to APHIS for their review and consideration, as they may fall within the purview of that agency. Please contact Jennifer Skidmore or Amy Sloan at (301) 713-2289 should you have any questions.

Sincerely,

Ann D. Terbush
Chief, Permits, Conservation
and Education Division
Office of Protected Resources

cc: James Gesualdi, Attorney at Law

KILLER WHALES RETURNING TO OHIO OCEANARIUM

Orca Pair Bound For Six Flags Worlds of Adventure

FOR IMMEDIATE RELEASE

Contact: Kim Stover, 330-562-7131, ext. 4207
Shannon D'Sidocky, ext. 4203

Aurora, Ohio-October 29, 2001-Killer whales will be returning to Six Flags Worlds of Adventure, the Cleveland-area oceanarium and theme park, officials at the Six Flags corporate office announced today.

Shouka, an eight-year-old female orca, and Shamenk, a ten-year-old male, may take up residence at the park within the next year, pending permit approvals and transportation arrangements. Shouka currently resides at Marineland Antibes in France, where she was born in 1993. Shamenk is the lone orca at Acuario Mundo Marino in Buenos Aires, Argentina.

Shouka and Shamenk are sent to Six Flags Worlds of Adventure on long-term breeding loans from their respective facilities. The orca pair will participate in educational and conservation-oriented presentations at the park.

-more-

The Ohio park has long been home to killer whales while it operated as Sea World Ohio under previous ownership. When Six Flags purchased Sea World Ohio in January 2001, the Busch Entertainment Corp. relocated the park's three resident orcas to other Sea World parks in San Diego and San Antonio. Six Flags merged the animal park with neighboring Six Flags Ohio to create Six Flags Worlds of Adventure.

"Bringing killer whales back to Worlds of Adventure underlines Six Flags' commitment to the great animal care and educational traditions that Cleveland area families have known and loved for generations," said Six Flags, Inc. president Gary Story. "We look forward to inspiring a new generation to learn about and care for these magnificent animals and their ocean environments."

Six Flags officials filed paperwork Monday for federal permits to bring the two killer whales to the Ohio park.

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Ministerio de Desarrollo Social
Secretaría de Ambiente
y Desarrollo Sustentable

BUENOS AIRES, 10 ABR. 2002

NOTA SAyDS N° 658/02

SEÑOR DIRECTOR:

Me dirijo a Usted en respuesta a la nota remitida con fecha 3 de abril de 2002, en la que solicita información acerca del estado de avance del trámite iniciado por este Oceanario, respecto a la autorización para exportar temporariamente un ejemplar de Orca *(Orcinus orca)* a los Estados Unidos, para ser integrado a un Programa de Reproducción, solicitud que tramita por Expediente N° 3350/01.

Al respecto, se informa que dicho trámite se encuentra siguiendo el procedimiento administrativo de rigor y, habiéndose realizado las consultas técnicas que la Dirección de Recursos Ictícolas y Acuícolas ha considerado pertinentes, se han girado dichas actuaciones al Servicio Jurídico de esta Secretaría para que tome la intervención que le compete.

Por otra parte, se deja constancia que esta Secretaría no tiene conocimiento sobre ninguna acción judicial iniciada sobre el tema que nos ocupa.

Sin otro particular, saludo a Usted muy atentamente.

ING. FIGL. CARLOS MERENSON
SECRETARIO DE AMBIENTE Y
DESARROLLO SUSTENTABLE

AL
SEÑOR DIRECTOR DE MUNDO MARINO S.A.
D. JOSE DAVID MENDEZ
S. / D.

APR 10 2002

Subject: **Questions coming**
Date: Thu, 24 Jan 2002 11:23:02 -0500
From: "Ann Terbush" <Ann.Terbush@noaa.gov>
Organization: NOAA
To: Jim Gesualdi <Jfges@aol.com>
CC: Jennifer Skidmore <Jennifer.Skidmore@noaa.gov>,
Gene Nitta <Gene.Nitta@noaa.gov>

Hi Jim,
The letter we talked about is still in clearance, however, these are the two areas of information needs that Bill Hughes may be able to pursue before he leaves Argentina:

- Further documentation of the circumstances regarding the beaching of Kshamenk and subsequent attempts for release (specifically, provide further evidence of the stranding and documentation from the Argentinean government that this animal is non-releasable) and

- A statement regarding CITES export permits (preferably from the Management Authorities of Argentina, indicating that an export permit has been issued, or that the circumstances of the proposed export are likely to be consistent with applicable regulations)

We'll FAX the letter covering the full range of information we need as soon as it is ready.

Ann

Ann D. Terbush <Ann.Terbush@noaa.gov>
Chief, Permits, Conservation & Education Division
Office of Protected Resources
National Marine Fisheries Service, NOAA

LAW OFFICES
GARVEY, SCHUBERT & BARER
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

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(206) 464-3939

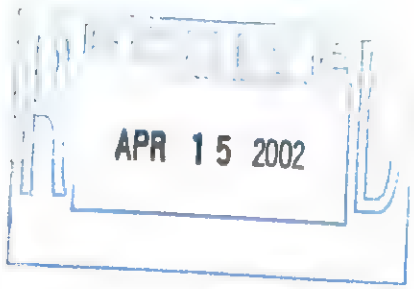
FIFTH FLOOR
1000 POTOMAC STREET N.W.
WASHINGTON, D.C. 20007
(202) 965-7880

FAX: (202) 965-1729

PLEASE REPLY TO WASHINGTON, D.C OFFICE

PORTLAND
ELEVENTH FLOOR
121 S.W MORRISON STREET
PORTLAND, OREGON 97204-3141
(503) 228-3939

April 11, 2002



VIA FACSIMILE (301) 713-0376 and MAIL

Ms. Ann Terbush, Chief
Permits, Conservation and Education Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, Maryland 20910

Re: Funtime, Inc. d/b/a Six Flags Worlds of Adventure ("Six Flags")
Marine Mammal Import Permit Application
File No. 1004-1656 (the "Application")

Dear Ms. Terbush:

This is to submit the annexed for inclusion within the above-referenced Application docket.

Thank you for your time and consideration.

Very truly yours,

Eldon V.C. Greenberg

Enclosure

MARVAL, O'FARRELL & MAIRAL

Av. Leandro N. Alem 928
1001 Buenos Aires
Argentina
Telephone (54 11) 4310-0100
Fax (54 11) 4310-0200
E-mail: marval@marval.com.ar
www.marval.com.ar

Buenos Aires, April 11, 2002

Messrs.
Six Flags Theme Parks Inc.
Attn. Bill Hughes / Jim Gesualdi
122 East 42nd Street
New York, New York 10168
USA

Ref.: Exportation of killer whale from Argentina

Dear Sirs,

Our opinion has been requested in connection with the legality under Argentine law of the exportation of a killer whale (an *Orcinus orca* named "Kshamenk") placed in "Mundo Marino" aquarium (Province of Buenos Aires, Argentina) to Six Flags Worlds of Adventure Park (Ohio, United States of America) as a consequence of the execution of the loan breeding agreement entered into by Mundo Marino S.A. (a company organized under Argentine laws) and Six Flags Theme Park Inc. (a company organized under Delaware laws).

In particular, we have been asked about the local applicable proceedings for obtaining the exportation and transport permits required by the applicable Argentine laws and regulations.

I. Facts

This opinion is based on the following facts, which were informed to us by Mundo Marino in three meetings held at our offices and through telephone conversations:

(i) In 1992 the killer whale Kshamenk was found by fishers when it was naturally stranded in the Bay of Samborombón, Province of Buenos Aires, Argentina, and it was placed in Mundo Marino aquarium for rehabilitation purposes.

(ii) The stranding and the progress of the rehabilitation were immediately informed to the relevant authorities of the Province of Buenos Aires and of the National Government.

(iii) Mundo Marino has timely and properly acquired, held and registered Kshamenk in accordance with applicable laws and regulations, obtaining all due certificates relating to the killer whale that were required by the relevant authorities of both the Province of Buenos Aires and the National Government.

(iv) Mundo Marino comply with all the relevant laws, decrees, resolutions and other rules set in forth by the National, Provincial and Municipal authorities, it is duly registered with them, and has obtained all required licenses and permits related to its business activities.

(v) In September 6, 2001 Mundo Marino S.A. has entered into by a loan agreement with Six Flags Theme Parks Inc., by which the parties to such agreement agreed on the exportation of the killer whale Kshamenk from Argentina and its importation into the United States of America for breeding purposes. There is not any other agreement between the Parties than the one before mentioned between Mundo Marino S.A. and Six Flags Theme Parks Inc. concerning the killer whale Kshamenk. No purchase price and/or economic consideration have been agreed between the parties for the exportation of Kshamenk.

(vi) In order to execute the agreement, Mundo Marino has filed an export petition before the Director of Natural Resources of the Federal Government, and has filed a transportation petition before the Ministry of Production of the Government of the Province of Buenos Aires.

(vii) In the file initiated by Mundo Marino before the Director of Natural Resources of the National Government in order to obtain an export license, a NGO called "Wild Earth Foundation" has submitted an administrative request expressing objections to the exportation of the killer whale.

For purpose of this opinion, we have assumed the facts above mentioned, without conducting any independent investigation or verification of any kind.

II. Legal Framework

In order to issue this opinion we have reviewed the following applicable legal framework:

(a) Constitution of the Republic of Argentina;

(b) Constitution of the Province of Buenos Aires;

(c) International Convention for the Regulation of Whaling, approved by National Decree 3162/46 and regulated by Decree 281/58;

(d) Argentine Civil Code;

(e) National Law 17,500;

(f) National Law 20,136;

(g) National Law 24,922 of Fishery Regime;

(h) National Law 19,549 of Administrative Procedures;

(i) National Law 22,351 of National Parks, National Resources and Natural Monuments;

(j) National Law 22,344 which approves the CITES Convention, with its amendments, regulatory decrees and resolution;

(k) National Law 22,451 of Protection of Wild Animals;

(l) National Law 25,052 relating to prohibition of capture of killer whales;

(m) National Resolutions 2513/93 and 2165/97 of the Customs Office;

(n) National Resolution 351/95 of the Director of Natural Resources with the Rules for the Aquariums;

(o) Provincial Law 11,477 - Fishery Regime;

(p) Provincial Law 11,723 – Environmental Law;

(q) Provincial Law 12,238 and its Regulatory Decree 2308/01- Zoological Houses and Similar Institutions Regime; and

(r) Provincial Decree 3237/95 – Aquariums Regime.

III. Documentation

We have reviewed copies of the following documents provided to us by Mundo Marino (the "Documentation"):

(a) Application for the export license and transport permit submitted before the Director of Natural Resources of the National Government on December 26, 2001 (this application includes specialized reports relating to the breeding agreement);

(b) Application for transport permit submitted before the Ministry of Production of the National Government on February 11, 2002; and

(c) Administrative request submitted by the NGO "Wild Earth Foundation" on March 6, 2002 in the file initiated by Mundo Marino before the Director of Natural Resources of the National Government. This request does not constitute an independent administrative proceeding. It constitutes a statement of objections within Mundo Marino's file initiated by the application referred above in (a).

We have assumed that the Documentation includes all the documents relevant to this analysis.

We have also assumed without any independent investigation the authenticity of all the copies submitted to us as copies.

IV. Analysis

The rights and duties that private companies or individual may have over the killer whales arises from the regulatory framework detailed above, resulting in a complex construction of the different and abundant applicable laws and regulations.

The following permits and licenses might be relevant for exporting Kshamenk:

(a) National Natural Resources Director's Authorization

Resolution 351/95 issued by the Director of Natural Resources of the National Government established that the exporter must require a permit for the exportation and transport of cetaceans. The Director of Natural Resources is the national authority in charge of the implementation of the CITES Convention.

(b) National Custom Office's Authorization:

According to the Resolution 2165/97 issued by the Argentine Customs Office, the exportation of killer whales is permitted subject to prior authorization of the relevant authorities.

(c) Provincial Transportation Permit

Decree 3237/95 issued by the Executive Branch of the Province of Buenos Aires establishes that the transport of cetaceans should be authorized by the Ministry of Production.

(d) Provincial Loan Authorization

Law 12,238 issued by the Province of Buenos Aires and its Regulatory Decree 2308/01 establish that the loan of the animals dwelling in a zoological house or a similar institution, should be authorized by the Ministry of Agriculture and Cattle.

The exportation of the killer whale is provided in the Argentine law and regulations and, consequently, is legally possible subject to the fulfillment of the requirements for the issuance of the relevant licenses and permits in administrative proceedings. However, the National and Provincial relevant authorities have discretional faculties with respect to the issuance of licenses and permits.

The decisions made by the competent administrative authorities are subject to administrative and judicial review. Mundo Marino or any other individuals or entities (including NGOs) may request such review.

* * *

We are licensed to practice law in Argentina and we do not express any opinion as to any matters governed by or involving conclusions under any law other than law of Argentina.

We express no opinion as to any laws other than the laws of Argentina, and we have assumed that there is nothing in any other laws that affect our opinion. In particular, we have made no independent investigation of the laws of the United States of America, nor of any jurisdiction other than Argentina and do not express or imply any opinion on such laws.

The opinions expressed above are delivered for the information of the persons to whom they are addressed and their respective legal counsel and may not be relied upon for any other purpose or by any other person without our express prior written consent. This opinion is limited to the matters stated herein and does not extend to, and is not to be read as extending by implication to, other matters not referred to herein.

Very truly yours,

Fernanda López Abramovich

Gabriel Matarasso

MUNDO MARINO
SAN CLEMENTE DEL TUYU • ARGENTINA

RECEIVED
APR 16 2002

April 11, 2002

BY FACSIMILE (301) 713-0376 AND MAIL

Ms. Ann D. Terbush, Chief
Permits, Conservation and Education Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway, Room 13705
Silver Spring, Maryland 20910

Re: Funtime, Inc. d/b/a Six Flags Worlds of Adventure
Marine Mammal Import Permit Application
File No. 1004-1656

Dear Ms. Terbush:

Mundo Marino is aware that, in connection with the pending application to import the Orca "Kshamenk" from Argentina, the National Marine Fisheries Service has received a number of comments concerning our operations. We are writing to clarify the record.

1. We wish to underscore Mundo Marino's long history of marine mammal care, rescue and research, all monitored and inspected by the Government of Argentina. In particular, Mundo Marino has engaged in marine mammal rehabilitation work for decades. This work is reflected in numerous scientific papers and has long been acknowledged by our enforcement authorities. I would also note that we are subject to periodic inspections and strict controls by Federal and Provincial officers to ensure that oceanariums and rehabilitation centers are functioning properly and are in compliance with the law.

2. It is also important for your agency to understand that Mundo Marino is staffed and supported by highly trained professionals whose dedication to marine mammal conservation and research is beyond question. I personally feel fortunate to have been able to work with respected experts in their field such as Drs. Loureiro and Bastida.

3. While it has been contended by some, with no evidence to support that contention, that Kshamenk came into Mundo Marino's possession by a "forced stranding," we utterly reject

MUNDO MARINO S.A. - Avda. Décima N° 157 - C.C. N° 6 - B7105GDB San Clemente del Tuyú - Pcia. Buenos Aires - Argentina
☎ (02252) 43-0300 (Líneas rotativas) y 43-0304/306/202 - FAX (02252) 42-1501 - E-mail: mundomar@satlink.com.ar
Oficina Bs. As.: Av. Córdoba 935 - C1054AAI Capital Federal - Tel. (011) 4325-2900 al 05 (Líneas rotativas) - Fax (011) 4325-2906

this unfounded claim. The rescue of Kshamenk was just that – a rescue. We believe that at all times we acted in the best interests of an accidentally stranded animal that would likely have died but for our intervention.

4. It has likewise been suggested that Kshamenk is a Patagonian killer whale. This idea, in our judgment, is totally wrong. We understand that an effort is being made to characterize Kshamenk as a Patagonian killer whale in order to challenge our scientific judgment regarding the circumstances and characteristic of strandings, risks involved, possibilities of the stranded animals to return to the sea, time of exposition out of water, incidence of strandings in the population, etc. However, it is our considered opinion that the killer whale Kshamenk, just like the other two specimens ("Milagro" and "Belen") related with Mundo Marino, must be considered "bonaerenses" (meaning: from Buenos Aires Province) specimens, or, at least, temporary visitors of this geographical area from the northern coast of Argentina. By no way do we accept that these specimens are killer whales from Patagonia.

5. Opponents of this application simply ignore the frequent strandings and posterior death of specimens recorded in Buenos Aires Province in the past decades. Instead, they try to explain the rescues of stranded killer whales as a result of a method of killer whale collection using the "driving" of the animals using small boats, until they strand. The stranded animals would then be maintained in site using a wood stake stuck in the mud. To be blunt, this explanation is a fantasy, and has nothing to do with the real facts, as attested to at length in prior submissions to your agency. In addition, we completely reject the suggestion that Belen came into our possession as a result of "forced stranding" with which we were allegedly complicit. Belen was found by the Benedictine priest Mamerto Menapace, whose honesty and integrity are beyond reproach.

6. Mundo Marino is in lawful possession of Kshamenk. Existing legal documents issued by enforcement authorities to Mundo Marino, based upon current Federal and Provincial regulations for oceanariums and marine fauna rehabilitation centers, completely establish our credentials and authority.

7. Mundo Marino continues to believe strongly in the benefits of breeding Shouka and Kshamenk for the conservation of wild fauna. International stud books about several fauna groups emphasize the importance of ensuring the biodiversity of species and are widely recognized by international experts.

8. At the same time, Mundo Marino strongly believes that continued maintenance of Kshamenk in our facilities is not in its best interests. Kshamenk is now a solitary killer whale. We do not believe that there are any reasonable prospects of releasing this animal to the wild. In

such circumstances, there is no question in our judgment that Kshamenk is best served by loaning the animal to Six Flags for breeding purposes.

Thank you for your time and anticipated thoughtful consideration.

Very truly yours,

José David Méndez
Director

MUNDO MARINO S.A. - Avda. Décima N° 157 - C.C. N° 6 - B7105GDB San Clemente del Tuyú - Pcia. Buenos Aires - Argentina
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MUNDO MARINO
SAN CLEMENTE DEL TUYU • ARGENTINA

April 11, 2002

BY FACCSIMILE (301) 713-0376 AND MAIL

Ms. Ann D. Terbush, Chief
Permits, Conservation and Education Division
Office of Protected Resources
National Marine Fisheries Service
1315 East- West Higway, Room 13705
Silver Spring, Maryland 20910

Re: Funtime, Inc. D/b/a Six Flags Worlds of Adventure
Marine Mammal Import Permit Application
File Nª 1004-1656

Dear Ms. Terbush:

We are sending you informative documents regarding the application submited by Six Flags Theme Parks to import the Killer Whale Kshamenk to U.S.A.

Adjunct you will find the Testimony before Notary from Mr. Miguel Marchi, and a Certificate from the Argentina Naval Guard Coast, where they certify that Mr. Marchi was on board in the fishing boat the date the facts occurred.

The fishing boat Mundo Marino I is used to fish for the food that the park uses to feed the animals.

Very Truly yours,

José David Méndez
Director

MUNDO MARINO S.A. - Avda. Décima Nº 157 - C.C. Nº 6 - B7105GDB San Clemente del Tuyú - Pcia. Buenos Aires - Argentina
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NELIDA NOEMI JAUREGUIBERRY de RACAK

ACTUACION NOTARIAL

GAA055116565

PROTOCOLO

OCHENTA Y TRES.- ACTA DE DECLARACION JURADA.- don Miguel César MARCHI.- En la ciudad de Santa Teresita, Partido de La Costa de la Provincia de Buenos Aires, a once de abril de dos mil dos ante mi, Nelida Noemi JAUREGUIBERRY de RACAK, Escribana Titular del Registro Uno de La Costa, comparece el señor **Miguel César MARCHI,** argentino, nacido el 15 de octubre de 1937, con Documento Nacional de Identidad número 5.313.201, casado, domiciliado en calle 10 y 57 de San Clemente del Tuyú, de este Partido, capaz, de mi conocimiento, doy fe.- Y dice que concurre a este acto a fin de efectuar una manifestación con carácter de DECLARACION JURADA de los siguientes hechos: Que habiendo tomado conocimiento de la carta presentada por el Museo Argentino de Ciencias Naturales "Bernardino Rivadavia" y W.E.F.(Fundación Tierra Salvaje), a Mrs. Ann D. Terbusch, Chief Permits Conservation and Education Division, y notificada a Mundo Marino en el día de la fecha en horas de la mañana, es su intención aclarar lo siguiente: Si anteriormente a esta oportunidad no realizó declaración respecto al hallazgo de Kshamenk, es porque dicha declaración fue realizada por quienes la encontraron. Manifiesta el requirente que el día anterior, 17 de noviembre de 1992, encontró varada a otra orca. En horas de la mañana, de ese día, mientras se encontraba pescando en la zona de la Ría Salinas, vió, sobre la costa, un animal; se acercó en un bote a remo debido a que había marea muy baja, y comprobó que se tra-

alrededor de las 9 horas de la mañana. Al día siguiente, 18 de noviembre de 1992, a la madrugada lo despertó su hijo, Fabián Marchi, quien estaba embarcado en otra lancha y acababa de llegar. El mismo le refirió que había visto otras orcas varadas cerca de la Ría de Ajó. Asimismo manifiesta el señor Marchi, que es su deseo aclarar que en las fechas que se mencionan en las cartas, el mismo se encontraba en perfecto estado de salud, y el alta médica le habia sido dada un año antes. En el mes de noviembre de 1992 se encontraba trabajando embarcado, pescando. Que Prefectura Naval Argentina tiene constancia de ello en su documentación y también figura en la Libreta de Embarque del requirente, que en original exhibe en este acto, como asimismo certificado médico expedido con fecha 9 de octubre de 1991, por el Hospital Instituto de Cardiología de Buenos Aires, por el cual le es dada el alta médica, de los cuales agrego fotocopia autenticada por cabeza a la presente, doy fe; manifestando el señor Marchi que copias autenticadas de esta documentación suministrará a quien corresponda. Continúa diciendo que el día 17 de noviembre de 1992 se encontraba embarcado en la lancha "Mundo Marino I" como marinero; que si bien siempre ha sido patrón de lancha pesquera desde la década del 70, debido a que durante esos meses debía viajar frecuentemente, se embarcó en esa categoria para que la lancha siempre pudiese salir; y aclara que el Puerto de San Clemente del Tuyú es un puerto pequeño, de no más

ACTUACION NOTARIAL

GAA055166566

teniendo más para agregar el requirente, doy por terminado el acto.- LEO al compareciente quien la ratifica en su contenido íntegro y así la otorga y firma, ante mi, doy fe.-

Ante mí

NELIDA NORMA JAUREGUIBERRY de RACAK
NOTARIA

PROTOCOLO

CERTIFICO: que la atestación notarial correspondiente a esta fotocopia se formaliza en el folio de actuación notarial número BAA026952O8

Sanb Tercip 11 de Abril de 2002

NELIDA NORMA JAUREGUIBERRY de RACAK

F°

ACTUACION NOTARIAL

BAA02695208

CONCUERDA con su matriz que pasó al folio 155 del Protocolo del corriente año del Registro UNO de La Costa, a mi cargo, doy fe.- EXPIDO el presente PRIMER TESTIMONIO para el requirente en dos fotocopias de los folios de Actuación Protocolar numerados GAA05516565 y GAA05516566 y el presente folio de Actuación Notarial número BAA02695208 que sello y firmo en Santa Teresita a once días de abril de dos mil dos.-

BAA02695208

La firma y sello que anteceden se legalizan en el valor de Legalización Nº FAA00952493 , que se agrega.-

Santa Teresita, 11/04/2002 .

NOT. MERCEDES ROSA PEREZ
SUBSECRETARIA FARM. DE LA COSTA
DELEGACION DOLORES

COLEGIO DE ESCRIBANOS DE LA PROVINCIA DE BUENOS AIRES
DELEGACION DOLORES

PREFECTURA NAVAL ARGENTINA

N°77/02.-
Letra: GLAV,RB.H.-

GENERAL LAVALLE, 11 de Abril del 2002.

AL SEÑOR:

Tengo el agrado de dirgirme a Ud., con relación a su nota S/N° de fecha 11 de abril del 2002, a efectos de informarle que el Sr. MIGUEL MARCHI , Libreta de Embarco N° 80800, se encontraba embarcado acorde constancias en la respectiva libreta como "MARINERO" en el B/P "MUNDO MARINO I" (01146) ex (4444), desde el dia 17-08-1992, habiendo efectuado el mismo en el Destacamento RÍO SALADO dependiente de la PREFECTURA LA PLATA, siendo desembarcado el dia 16-01-1995, en esta Suibprefectura.

Se deja constancia que el mismo poseia Habilitación como Patrón de Pesca Menor zona General Lavalle Ria Ajó y de Marinero, aunque en esa oportunidad estaba enrolado como "MARINERO", siendo el Patrón del B P de mención el Sr. OSVALDO PUERTAS L.E. N° 134.627.-

Sin mas saludo a Ud. muy Atte.-

PREFECTURA NAVAL ARGENTINA
SUBPREFECTURA GRAL LAVALLE

OSCAR ANTONIO ACOSTA
PREFECTO
JEFE SUBPREFECTURA Gral LAVALLE

AL SEÑOR DIRECTOR DE MUNDO MARINO S.A.
Dn. HERIBERTO CABRERA
S----------/----------D

CERTIFICO: que la atestación notarial correspondiente a esta fotocopia se formaliza en el folio de actuación notarial número EAA 0139089

Santa Teresa 11 de Abril de 2009.

Censo Año 1977

LUGAR: Gral. Lavalle FECHA 20/03/78

FIRMA:

Dirección de Seguridad de la Navegación

CARLOS JUSTO LEYES
PREFECTO

REPUBLICA ARGENTINA

SECRETARIA DE MARINA

PREFECTURA NACIONAL MARITIMA

Libreta de Embarco

de D. Miguel César MERCHI

(Nombre y Apellido)

BANDERA DE LA
MARINA MERCANTE ARGENTINA

REGISTRO Nº 80.800

CERTIFICO: que la atestación notarial correspondiente a esta hoja se formaliza en el folio de actuación notarial número EAA0/390895

Santa Teresita 11 de Abril de 2002

HOSPITAL INSTITUTO DE CARDIOLOGIA
FUNDACION
HERMENEGILDA POMBO DE RODRIGUEZ
CORONEL DIAZ 2423 – (1425) - BUENOS AIRES
TELEFONOS: 805-9660/6/7/8/9
ACADEMIA NACIONAL DE MEDICINA
DE BUENOS AIRES

El Sr. Hacchi Miguel puede realizar sus tareas habituales realizando esfuerzos de leves a moderados.

Se extiende la presente a pedido del interesado con el objeto de ser presentado ante quien corresponda

DRA. MABEL SZYLKO
MEDICA
M.N. 82304
9/10/91

CERTIFICO: que la diligencia notarial correspondiente a esta fotocopia se formaliza en el folio de actuación notarial número EA9013908 95

Sant Feliu de Llobregat 11 de Abril de 2002.

EAA01390895

Fº

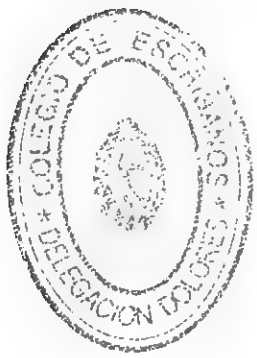
CERTIFICO que el documento adjunto que consta de TRES fojas que llevan mi sello y firma, es copia fiel de su original, que tengo a la vista doy fe.- Registro número UNO del Distrito de LA COSTA ..... Lugar y fecha: Santa Teresita, 11 de abril de 2002.-

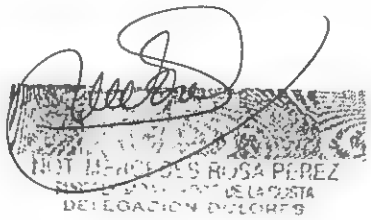
NELIDA [illegible] de BACAK

EAA01390895

La firma y sello que anteceden se legalizan en el valor de Legalización N° EAA0095243

Santa Teresita, 11/04/2002







Fº

FAA00952493

LEGALIZACIONES

Decreto - Ley 9020 (Artículos 117/118)

EL COLEGIO DE ESCRIBANOS DE LA PROVINCIA DE BUENOS AIRES República Argentina, en virtud de la facultad que le confiere la Ley Orgánica del Notariado, legaliza la firma y el sello del notario D Nelida Noemí Laureguiberry de Lacak. — obrantes en el Documento Nº BAA026P5208 y EAA01390895 —

La presente legalización no juzga sobre el contenido y forma del documento.

Santa Teresita, once de abril de 2002 —

NOT. MERCEDES ROSA PEREZ
SUBROGANTE PARTIDO DE LA COSTA
DELEGACION DOLORES

FAA00952493

CERTIFICO: que la atestación notarial correspondiente a esta fotocopia se formaliza en el folio de actuación notarial número EA4013908 97
San Fernando 12 de Abril de 2002
Consta de 8 FOLIOS.-

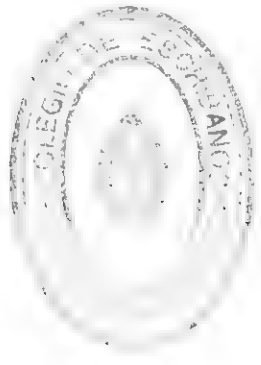
F°

EAA01390897

CERTIFICO que el documento adjunto que consta de OCHO (8) —
fojas que llevan mi sello y firma, es copia fiel de su original, que tengo a la vista
doy fe.- Registro número UNO del Distrito de LA COSTA —
— Lugar y fecha: SANTA TERESITA,
doce de Abril de dos mil dos. —

EAA01390897

La firma y sello que ...
de Legalización Nº FAA00952497
Santa Teresita, 12/04/2002



F°

FAA00952497

LEGALIZACIONES

Decreto - Ley 9020 (Artículos 117/118)

EL COLEGIO DE ESCRIBANOS DE LA PROVINCIA DE BUENOS AIRES República Argentina, en virtud de la facultad que le confiere la Ley Orgánica del Notariado, legaliza la firma y el sello del notario D Nélida Noemi Jaureguiberry de Racak.

obrantes en el Documento N° EAA01390897.

La presente legalización no juzga sobre el contenido y forma del documento.

Santa Teresita, 12 de abril de 2002.

TESTIMONY BEFORE NOTARY

GAA05516565

EIGHTY THREE – ACT OF TESTIMONY from Mr. Miguel César Marchi

In Santa Teresita City, Partido de La Costa, Buenos Aires Province, April 11th. . 2002, before me, Nelida Noemí JAUREGUIBERRY de RACKAK, Titular Notary - Civil Register Office N° 1 La Costa Mr. Miguel Cesar Marchi born October 15 1937, , National Identification Document N° 5.313.201, married , living in 10 and 57 St. - San Clemente del Tuyú – Partido de La Costa – capable, I know, I certify. He manifests that he is present in this act in order to testify the following events.- That having been aware about a letter presented by the Bernardino Rivadavia Museum and the W.E.F.Wild Earth Foundation to Ms. Ann D. Terbush, Chief Permits Conservation and Education Division, and notified to Mundo Marino today in the morning, it is his intention to make clear the following: If I did not present to testify before now regarding the finding of Khamenk, is because the testimony was given by the persons that found Kshamenk. Mr. Marchi manifest that the day before, November 17 he found another stranded killer whale. In the morning of that day, while he was fishing in the area of Ria Las Salinas, he saw, on the coast, an animal; he got nearer with an oar boat because the tide was very low., and certified that it was a stranded killer whale. He informed about this to Mundo Marino about 9 a.m., The following day, November 18 1992, early in the morning, his son waked him up, Fabian Marchi, who was on board the other fishing boat, and that had just arrived. He referred that they had seen other

stranded killer whales near the Ria Ajo. Mr. Marchi also manifests that his desire is to declare that the dates mentioned in the letters, he was in perfect health state, and that the medical discharge had been given a month earlier. In November 1992 he was on board, fishing. That the Naval Guard Coast has constancies of that in their documents, and this also is present in his Boarding Book., which original is exhibited in this act, such like the medical certificate expedited in October 9 1991, by the Cardiologic Hospital Institute in Buenos Aires, through which the Discharge is given, whose certified copy is adjunct to the present, I certify. Mr. Marchi manifests that certified copies of these documentation will be given to whom it may concern. He continues telling that in November 17 1992 he was on board the fishing boat "Mundo Marino I" as a sailor; that although he has always been the captain of that fishing boat since 70s, because during those months he had to frequently travel, he was Boarded in that category in order that the fishing boat could always be in conditions to sail; and he explains that San Clemente del Tuyú is a very small port, with no more than 8 or 10 ships and a small number of fishermen. Having no more to testify, I consider this act finished.

I read him this report and ratifies that it is integrally correct, and signs its before me. I testify.

TRANSLATION

CARDIOLOGIC HOSPITAL INSTITUTE
HERMENEGILDA POMBO DE RODRIGUEZ FOUNDATION
Coronel Diaz 2423 (1425) Buenos Aires
Telephones: 805 9660/6/7/8/9
National Academy of Medicine of Buenos Aires

Mr. Miguel Marchi can perform his habitual tasks, making light or moderate efforts.

The present is extended as asked by the interested person, in order to be presented to whom it **may concerns.**

Dra. Mabel Szylko
Medic
M.N. 82304

October 9, 1991

This is the Certificate from Argentina Naval Guard Coast, declaring that Mr. Miguel Marchi was on board the fishing boat the date that the mentions in his Testimony.

PREFECTURA NAVAL ARGENTINA

N°77/02.-
Letra: GLAV,RB.H.-

GENERAL LAVALLE, 11 de Abril del 2002.

AL SEÑOR:

Tengo el agrado de dirgirme a Ud., con relación a su nota S/N° de fecha 11 de abril del 2002, a efectos de informarle que el Sr. MIGUEL MARCHI , Libreta de Embarco N° 80800, se encontraba embarcado acorde constancias en la respectiva libreta como "MARINERO" en el B/P "MUNDO MARINO I" (01146) ex (4444), desde el dia 17-08-1992, habiendo efectuado el mismo en el Destacamento RÍO SALADO dependiente de la PREFECTURA LA PLATA, siendo desembarcado el dia 16-01-1995, en esta Suibprefectura.

Se deja constancia que el mismo poseia Habilitación como Patrón de Pesca Menor zona General Lavalle Ria Ajó y de Marinero, aunque en esa oportunidad estaba enrolado como "MARINERO", siendo el Patrón del B/P de mención el Sr. OSVALDO PUERTAS L.E. N° 134.627.-

Sin mas saludo a Ud. muy Atte.-

PREFECTURA NAVAL ARGENTINA
SUBPREFECTURA Gral. LAVALLE

OSCAR ANTONIO ACOSTA
PREFECTO
JEFE SUBPREFECTURA Gral. LAVALLE

AL SEÑOR DIRECTOR DE MUNDO MARINO S.A.
Dn. HERIBERTO CABRERA
S————/————————D

CERTIFICO: que la atestación notarial correspondiente a esta fotocopia se formaliza en el folio de actuación notarial número EAA 013908 95
Sanb Tereiib 11 de Abril de 2002.

NELIDA NOEMI JAUREGUIBERRY de RACAK
NOTARIA

MUNDO MARINO
SAN CLEMENTE DEL TUYU • ARGENTINA

Envío de fax

TO: MS ANN TERBUSH **Fax:** 001 (301) 713 0376
Chief Permits, Conservation and
Education Division

FROM. MUNDO MARINO S.A. **DATE:** 11 de abril de 2002
JOSE MENDEZ

SUBJECT: INFORMATION **PAGES:** Including this 15 (fifteen)

OUR FAX: + +54 (2252) 421501

☐ **Urgent**

APR 12 2002

MUNDO MARINO S.A. - Avda. Décima N° 157 - C.C. N° 6 - B7105GDB San Clemente del Tuyú Pcia. Buenos Aires - Argentina
☎ (02252) 43-0300 (Lineas rotativas) y 43-0304/306/202 - FAX (02252) 42-1501 - E-mail: mundomar@satlink.com ar
Oficina Bs. As.: Av. Córdoba 935 - C1054AAI Capital Federal - Tel. (011) 4325-2900 al 05 (Lineas rotativas) - Fax (011) 4325-2906

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RECEIVED
FEB 20 2002

February 19, 2002

VIA FACSIMILE

Ms. Ann D. Terbush
Chief, Permits, Conservation and Education Division
Office of Protected Resources
National Marine Fisheries Services
1315 East West Highway
Silver Spring, MD 20910

Dear Ms. Terbush:

This letter is in reference to the request for additional information in your letter dated February 15, 2002.

1) It is anticipated that the female killer whale will be the first animal to be transported to Six Flags Worlds of Adventure. Furthermore it is anticipated that the male will be transported approximately 30 days after her arrival.

2) The animals will be physically separated upon their arrival. Our experience would indicate that it may take up to two weeks to have the animals fully acclimated to our facility. Once they are acclimated to the facility we will begin the process of acclimating them together. This process will be dependent upon the animals. We expect this acclimation period to take two to three weeks.

3) The medical history for the animals is well known and well documented at both institutions. Therefore formal quarantine procedures will not be required in Ohio. As stated previously, these will be the only animals in the killer whale facility. We will restrict the staff working with these animals to only working in the killer whale facility.

Sincerely,

Tobi Pledger

Tobi Pledger, DVM
Staff Veterinarian

Cc: Barbara Kohn, DVM., APHIS

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

FEB 15 2002

G. William Hughes
Zoological Director
Funtime, Inc.
Six Flags Worlds of Adventure
1060 North Aurora Road
Aurora, OH 44202

Dear Mr. Hughes:

This is a follow-up to the request for additional information sent to you on January 28, 2002. We are requesting further clarification from the attending veterinarian concerning the following (as referenced in the US Department of Agriculture, Animal and Plant Health Inspection Service's comments of December 21, 2001):

1) Transport sequence: please indicate which animal will be transported first, and the approximate interval between transport of the second animal;

2) Acclimation times: please provide more information regarding physical versus behavioral acclimation, and provide estimates of the duration of acclimation periods, if possible; and

3) Quarantine procedures: please provide a description of what, if any, quarantine procedures are needed in Ohio.

Submission of the above information will complete our request for additional information, and publication in the Federal Register will follow. Please contact Jennifer Skidmore or Amy Sloan at (301) 713-2289 should you have any questions.

Sincerely,

Ann D. Terbush
Chief, Permits, Conservation
and Education Division
Office of Protected Resources

cc: James Gesualdi, Attorney at Law
Barbara Kohn, D.V.M., APHIS

Printed on Recycled Paper

Subject: Re: Request for copies of comments
Date: Thu, 21 Mar 2002 12:04:58 EST
From: <Jfges@aol.com>
To: Jennifer.Skidmore@noaa.gov
CC: bhughes@sftp.com

Dear Jennifer:

This is to request copies of the comments received to date with respect to the Six Flags application. The copies can be sent to Bill Hughes and me. Please let me know if you need my Fed Ex number. Thank you. JFG

James F. Gesualdi, AICP
Attorney at Law
58 Wingam Drive
Islip, Long Island, New York 11751-4112
Telephone: (631)224-4801
Facsimile: (631)224-1678
Email: Jfges@aol.com

PLEASE TAKE NOTICE: The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you have received this transmission in error, please contact the sender immediately and delete the material from any computer.

Subject: Comments
Date: Wed, 24 Apr 2002 07:56:54 -0500
From: "Bill Hughes" <bhughes@sftp.com>
To: <Jennifer.Skidmore@noaa.gov>

Jennifer,
Were you able to send me the comments that I requested on Monday? If so could you please let me know when I can expect them.

Thank you.

G. William Hughes
Zoological Director
Six Flags Worlds of Adventure
(330) 995 - 2149
bhughes@sftp.com

Subject: Application
Date: Fri, 26 Apr 2002 11:44:07 -0500
From: "Bill Hughes" <bhughes@sftp.com>
To: <Jennifer.Skidmore@noaa.gov>
CC: <Jfges@aol.com>

Dear Jennifer,
I was wondering how I will be notified of the decision on our application. Will you call me or do I need to call and check on the progress. Thank you for your help.

G. William Hughes
Zoological Director
Six Flags Worlds of Adventure
(330) 995 - 2149
bhughes@sftp.com

Subject: Request
Date: Sat, 11 May 2002 06:18:09 -0500
From: "Bill Hughes" <bhughes@sftp.com>
To: <Jennifer.Skidmore@noaa.gov>

Dear Jennifer,
I would like to request that you fax to my office the final decision on our import application. Thank you for your consideration. (330) 995-2117 (FAX)

I also want to thank you for your help during this process. It has been a real learning experience for me. Thanks again.

G. William Hughes
Zoological Director
Six Flags Worlds of Adventure
(330) 995 - 2149
bhughes@sftp.com

Subject: Additional Request
Date: Thu, 16 May 2002 12:51:43 -0500
From: "Bill Hughes" <bhughes@sftp.com>
To: <Jennifer.Skidmore@noaa.gov>
CC: <Jfges@aol.com>

Dear Jennifer,

One additional request that I forgot to ask you the other day on the phone. Could you also please fax the final decision on our import permit application to Jim Gesualdi. (631) 224-1678. Thank you for all of your help we do appreciate it.

G. William Hughes
Zoological Director
Six Flags Worlds of Adventure
(330) 995 - 2149
bhughes@sftp.com

Subject: FedEX
Date: Fri, 17 May 2002 05:24:21 -0500
From: "Bill Hughes" <bhughes@sftp.com>
To: <Jennifer.Skidmore@noaa.gov>

Jennifer,
Thank you again for your help with our permit. Can you tell me when you will be or have sent our permit. If you are going to send it by FedEx today please make it for Saturday delivery. Thanks and if I have any questions I will be sure to call.

G. William Hughes
Zoological Director
Six Flags Worlds of Adventure
(330) 995 - 2149
bhughes@sftp.com

Subject: **Public Comments**
Date: Fri, 04 Jan 2002 10:27:24 -0500
From: Jennifer Skidmore <jennifer.skidmore@noaa.gov>
Organization: NOAA
To: Bill Hughes <bhughes@sftp.com>
CC: Amy Sloan <Amy.Sloan@noaa.gov>

Bill,

I received your fax yesterday. We are in the process of going through the comments. I can't promise that we will have them ready to go out today, but we will do our best.

Jennifer

Jennifer Skidmore, Biologist
NMFS, Office of Protected Resources
301-713-2289 (tel) 301-713-0376 (fax)

Subject: Re: Public Comments
Date: Fri, 04 Jan 2002 09:37:50 -0600
From: "Bill Hughes" <bhughes@sftp.com>
To: <Jennifer.Skidmore@noaa.gov>

Thank you for all your help.

>>> "Jennifer Skidmore" <Jennifer.Skidmore@noaa.gov> 01/04/02 10:27AM >>>
Bill,

I received your fax yesterday. We are in the process of going through the comments. I can't promise that we will have them ready to go out today, but we will do our best.

Jennifer

Subject: **Re: Public Comments**
Date: Tue, 08 Jan 2002 11:52:33 -0500
From: Jennifer Skidmore <jennifer.skidmore@noaa.gov>
Organization: NOAA
To: Bill Hughes <bhughes@sftp.com>

Bill,

Sorry for the delay. Our clerk has been out sick. I made copies of the comments yesterday and hope to have them out either today or tomorrow.

Jennifer

Bill Hughes wrote:

> *Thank you for all your help.*
>
> *>>> "Jennifer Skidmore" <Jennifer.Skidmore@noaa.gov> 01/04/02 10:27AM >>>*
> *Bill,*
>
> *I received your fax yesterday. We are in the process of going through the comments. I can't promise that we will have them ready to go out today, but we will do our best.*
>
> *Jennifer*

Jennifer Skidmore, Biologist
NMFS, Office of Protected Resources
301-713-2289 (tel) 301-713-0376 (fax)

Subject: **Re: Public Comments**
Date: Thu, 10 Jan 2002 14:10:23 -0500
From: Jennifer Skidmore <jennifer.skidmore@noaa.gov>
Organization: NOAA
To: Bill Hughes <bhughes@sftp.com>

Bill,

I found them. They might make it in this afternoon's mail or tomorrow morning's. I apologize for the delay.

Jennifer

Jennifer Skidmore, Biologist
NMFS, Office of Protected Resources
301-713-2289 (tel) 301-713-0376 (fax)

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1	Saturday	June 9	9-11 AM Seals
8	Saturday	June 16	9-11 AM Dolphins
17	Saturday	June 23	9-11 AM Penguins
25	Saturday	June 30	9-11 AM Sharks
29	Saturday	July 7	9-11 AM Seals
34	Saturday	July 14	9-11 AM Penguins
43	Saturday	July 21	9-11 AM Dolphins
48	Saturday	July 28	9-11 AM Penguins
55	Saturday	August 4	9-11 AM Sharks
64	Saturday	August 11	9-11 AM Dolphins
72	Saturday	August 18	9-11 AM Dolphins
82	Saturday	August 25	9-11 AM Seals

Fee: $20 per child per session, $17 for passholders

PRE-K *(entering K in September)*

Sounds Of The Sea

Listen... What do you hear? Experience fish, dolphins, birds, and sea lions creating some incredible sounds. Group activities, listening and observation will help you learn about the sounds of the sea.

26	Tuesday	July 3	9-11:30 AM
74	Monday	August 20	9-11:30 AM

Fee: $22, $19 for passholders

1-2-3 Animals Of The Sea

How many arms does a seastar have? How many different penguins do you see? Come and learn about the world of the sea while we practice our counting 1,2,3!

5	Thursday	June 14	9-11:30 AM
52	Thursday	August 2	9-11:30 AM
79	Thursday	August 23	9-11:30 AM

Fee: $22, $19 for passholders

PRE-K *(entering K in September)*

Rainbow In The Sea

Children are introduced to a kaleidoscope of ocean colors that both marine animals and plants display. Through guided discovery, crafts, and exciting activities, children expand their understanding of colors and why they are important to marine life.

14 Thursday June 21 9-11:30 AM
53 Friday August 3 9-11:30 AM

Fee: $22, $19 for passholders

Shark Parade

Sharks are great! They come in many shapes and sizes. Join us as we learn about sharks by watching them parade by in the Shark Experience, our 400,000 gallon display. Crafts, stories, and exploration are all part of the fun.

7 Friday June 15 9-11:30 AM
81 Friday August 24 9-11:30 AM

Fee: $22, $19 for passholders

GRADE K

The Sea And Me

What do we have in common with sea animals? By comparing the underwater world to the world of kindergartners, children can better understand the ocean environment. They will uncover similarities and differences between life on land and life in the sea through role-playing, songs, ocean art and animal observation.

21	Wednesday	June 27	9-11:30 AM
57	Monday	August 6	9-11:30 AM

Fee: $22, $19 for passholders

Life In The Sea—A-Z

Join us for an alphabetical look at our ocean residents, from A-Z. Encounter angelfish to Zebra eels, and lots of animals in between. Crafts and exploration are just part of the fun! (2 days)

22	Wednesday and Thursday	June 27-28	9 - 11:30 AM
40	Wednesday and Thursday	July 18-19	9 - 11:30 AM
68	Wednesday and Thursday	August 15-16	9 - 11:30 AM

Fee: $33, $30 for passholders

GRADE K

Marine Mammal Mania

It s party time , and we re inviting you to join in our celebration of mammals. Play some party games, make a craft, and visit with some of the park s marine mammals.

11	Tuesday	June 19	9-11:30 AM
13	Wednesday	June 20	9-11:30 AM
60	Wednesday	August 8	9-11:30 AM
71	Friday	August 17	9-11:30 AM
76	Tuesday	August 21	9-11:30 AM

Fee: $22, $19 for passholders

Fossil Friends

Become a junior paleontologist! Discover how fossils were formed millions of years ago. Go on a fossil dig to learn how scientists use fossils to learn more about animals that lived a long, long time ago. Join us for this interactive and exciting adventure.

15	Thursday	June 21	9-11:30 AM
41	Friday	July 20	9-11:30 AM

Fee: $22, $19 for passholders

GRADE 1

Ocean Detective

Become an ocean sleuth. Join us on a fascinating journey through the park. Encounter marine animals and look for clues to solve the mystery of the day! Let s go detectives!

9	Monday	June 18	9-11:30 AM
24	Friday	June 29	9-11:30 AM
33	Friday	July 13	9-11:30 AM
63	Friday	August 10	9-11:30 AM

Fee: $22, $19 for passholders

Antarctic Adventure

Do you love an adventure? Need a break from the summer heat? Cool down as we explore the frozen world of Antarctica and its inhabitants.

16	Friday	June 22	9-11:30 AM
67	Wednesday	August 15	9-11:30 AM

Fee: $22, $19 for passholders

GRADE 1

Arts And The Sea

If you love art and the sea, this is the class for you! A variety of art mediums will be used to explore the ocean and the animals that live there. Be ready to create and learn. Don t forget to bring your imagination! (2 days)

35	Monday and Tuesday	July 16-17,	9-11:30 AM
65	Monday and Tuesday	August 13-14,	9-11:30 AM

Fee: $33, $30 for passholders

Sensational Sharks

Sharks are marvelous and mysterious creatures. Discover the truth about sharks and why they are so important in their ocean home. After spending some time with them, you ll realize why they really are sensational sharks .

4	Wednesday	June 13	9-11:30 AM
58	Tuesday	August 7	9-11:30 AM
73	Monday	August 20	9-11:30 AM

Fee: $22, $19 for passholders

GRADES 2-3

Marine Explorers

Are you ready for a week of fun in the sun? Join us for a week long adventure exploring the park and the amazing animals that live here. Games, crafts, and animal observations are all part of the fun. Don t forget to wear your sunscreen! (5 days)

30	Monday through Friday	July 9-13	9 AM -12 noon

Fee: $110; $100 for passholders

Whale Watchers

Did you know that dolphins are whales? Discover the wonderful world of whales. Learn the differences between toothed and baleen whales, and how to identify certain types in the ocean. Whale watching at Dolphin Stadium is part of the fun.

23	Thursday	June 28	9 AM -12 noon
62	Thursday	August 9	9 AM -12 noon
80	Thursday	August 24	9 AM -12 noon

Fee: $22, $19 for passholders

GRADES 2-3

Out To Lunch

Munch! Crunch! Strain! Slurp! Have you ever wondered how animals feed? Join us for one day of fun-filled feeding. Visit the animals of Six Flags Worlds of Adventure as you learn what and how they eat and **DON'T FORGET YOUR LUNCH!!**

6	Friday	June 15	9 AM-1 PM
42	Friday	July 20	9 AM-1 PM
54	Friday	August 3	9 AM-1 PM
75	Tuesday	August 21	9 AM-1 PM

Fee: $22, $19 for passholders

Hunters Of The Sea

Sea Lions, dolphins, and sharks, oh my! Spend two days learning and observing ocean predators. Discover what and how they hunt, but don t be afraid, because these animals only hunt in the sea! (2 days)

18	Monday and Tuesday	June 25-26	9 AM -12 noon
27	Thursday and Friday	July 5-6	9 AM -12 noon
49	Monday and Tuesday	July 30-31	9 AM -12 noon

Fee: $33, $30 for passholders

GRADES 4-6

Marine Explorers

Are you ready for a week of fun in the sun? Spend five days on the wildlife side of Six Flags Worlds of Adventure discovering the amazing marine animals that live here. Games, crafts, and animal observations are all a part of the fun. Don t forget to wear your sunscreen (5 days)

44	Monday through Friday	July 23-27	9 AM -12 noon

Fee: $110; $100 for passholders

Marine Mammal Adventure

Join us for two days as we learn how marine mammals are adapted to their lives in the ocean. Get a closer look at sea lion and dolphin training sessions. (2 days)

19	Monday and Tuesday	June 25-26	9 AM -12 noon
31	Monday and Tuesday	July 9-10	9 AM -12 noon
36	Monday and Tuesday	July 16-17	9 AM -12 noon
50	Monday and Tuesday	July 30-31	9 AM -12 noon
56	Monday and Tuesday	August 6-7	9 AM -12 noon
66	Monday and Tuesday	August 13-14	9 AM -12 noon

Fee: $33, $30 for passholders

GRADES 2-3

The Glow From Below

What s that glow from below? Discover mysterious creatures that shine in the darkest ocean waters and learn about how and why they glow. An exciting art project completes this fascinating underwater exploration.

2	Tuesday	June 12	9 AM -12 noon
77	Wednesday	August 22	9 AM -12 noon

Fee: $22, $19 for passholders

Let's Get Wet

Splish, Splash, are you taking a bath? Not quite, but you will get wet! Join us as we explore the world of water through animal observation, games, and an informative wet lab . Won t you come get wet with us? (2 days)

3	Wednesday and Thursday	June 13-14	9 AM -12 noon
28	Thursday and Friday	July 5-6	9 AM -12 noon
39	Wednesday and Thursday	July 18-19	9 AM -12 noon
51	Wednesday and Thursday	August 1-2	9 AM -12 noon
69	Thursday and Friday	August 16-17	9 AM -12 noon
78	Wednesday and Thursday	August 22-23	9 AM -12 noon

Fee: $33, $30 for passholders

GRADES 4-6

Sharks!

Sharks that eat people or take over a research center? No! Only in the movies. Come meet our sharks and discover the truth about these top predators who ve received a bad name. You ll be able to unlock mysteries of shark anatomy and adaptations. (2 days)

61	Thursday and Friday	August 9-10	1-4 PM

Fee: $33, $30 for passholders

Penguin Pals And Predators

Penguins live in both the warmest and coldest places on earth. Take a journey with us around the world to discover the fascinating lives of these flightless birds. Learn about their predators and prey, and how they survive in the ocean. (2 days)

37	Monday and Tuesday	July 16-17	1-4 PM

Fee: $33, $30 for passholders

GRADES 4-6

On The Brink Of Extinct?

Sea turtles, Blue whales, Caninde macaws Today, these and many other species are facing extinction. Is there anything you can do to help save them. Yes, of course! Learn why animals become endangered and ways you can help protect them. Come meet some of the endangered animals that reside at Six Flags Worlds of Adventure and discover why they have an important job as animal ambassadors.

10 Tuesday June 19 1-4 PM

Fee: $22, $19 for passholders

Signs Of The Sea

Silence How would you communicate with someone who could not hear you? Join us as we take a trip through the park using sign language. You ll use the signs of the sea as you meet our sharks, penguins, pinnipeds, and more.

12	Wednesday	June 20	1-4 PM
70	Thursday	August 16	1-4 PM
46	Thursday	July 26	1-4 PM

Fee: $22, $19 for passholders

GRADES 4-6

A Day In The Life...

All the things animal trainers and animal care staff do in one day is amazing! Performances are only a small segment of a very long and busy day. Come spend some time meeting trainers and animal care specialists, and learn about their daily duties and responsibilities. This **overnight** experience allows students to work side by side with Six Flags animal staff.

20	Wednesday PM to Thursday AM	June 27-28	7 PM - 8:30 AM
32	Wednesday PM to Thursday AM	July 11-12	7 PM - 8:30 AM
38	Wednesday PM to Thursday AM	July 18-19	7 PM - 8:30 AM
45	Wednesday PM to Thursday AM	July 25-26	7 PM - 8:30 AM
59	Wednesday PM to Thursday AM	August 8-9	7 PM - 8:30 AM

Fee: $100, $90 for passholders

Inside Sharks

Can sharks hatch from an egg? Do sharks grow as big as a school bus? Do sharks live in fresh water? Learn the answers to these and many other questions as you join us for a look inside (and out!) of these magnificent, and often misunderstood, fish. This class will include discussion, observation, and dissection.

47 Friday July 27 1-4 PM

Fee: $30, $27 for passholders

2001 SUMMER SEAfari CAMP GUIDELINES

* For the best experience for your child, both academically and socially, your child **MUST be enrolled in a Summer Seafari class for the grade he/she completed** in the spring of 2001.

*Class size is limited.

*Some class times may be changed from what is printed due to activities in the park. Your confirmation letter will have any changes to class times indicated.

*Classes are for registered campers only.

*We fill courses on a first-come, first-served basis.

*You must register by mail.

*Any cancellation MUST be made two days before the class begins.

*We charge a $5 cancellation fee if you request a refund.

*If you register for more than one course, please write separate checks for each course. This insures a prompt refund if a course is filled.

*To enroll in more than one course, please copy the Registration form.

*Confirmation letters are sent out one week prior to the class.

*If we do not contact you to inform you that a class is full, you may assume that you are enrolled in the class.

*Summer Seafari Camp Fees **DO NOT** include admission to Six Flags Worlds of Adventure after the class is over.

*The Summer Seafari Camp staff includes trained, certified teachers.

Mail the registration form and payment-in-full to: MARINELIFE EDUCATION DEPARTMENT, SIX FLAGS WORLDS OF ADVENTURE, 1100 SEA WORLD DRIVE, AURORA, OHIO 44202-8706

Please make check or money order payable to Six Flags Worlds of Adventure. To charge your Summer Seafari classes, please complete the charge card section on the registration form and mail completed form to us. We can accept VISA, MasterCard, Discover and American Express.

SUMMER SEAFARI T-SHIRTS

Every student will receive a Summer Seafari Camp T-shirt, which will be distributed at the beginning of the class and must be worn during the class (grades preschool through 9). If the class is longer than one session, the shirt must be worn the following day. This enables us keep the class together as we explore the park. Additional T-shirts may be purchased for $10 each.

ADDITIONAL INFORMATION

For additional information, or for special needs information, please call the Six Flags Marinelife Education Department: ***(330) 562-8101 ext. 2280***



2001 SUMMER SEAFARI CAMP REGISTRATION FORM

STUDENT S LAST NAME _____ FIRST/NICKNAME _____

GRADE COMPLETED, 2001 _____ STUDENT S BIRTHDATE _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

PARENT S NAME _____

HOME PHONE _____ PARENT S WORK PHONE _____

NAME OF COURSE _____ COURSE # _____

DATE(S) OF COURSE _____ AMOUNT ENCLOSED _____

CREDIT CARD INFORMATION

YOUR NAME AS IT APPEARS ON THE CARD _____ EXPIRATION DATE _____

CHARGE CARD NUMBER _____ SIGNATURE _____

❑ VISA ❑ MasterCard ❑ American Express ❑ Discover

ANNUAL PASS INFORMATION

ANNUAL PASS # _____ EXPIRATION DATE _____

FOR PARENT PARTICIPATION COURSE (PRESCHOOL PROGRAMS ONLY)

PARENT S NAMES _____

CHILDREN S NAMES _____

PLEASE INDICATE SIZE OF SUMMER SEAFARI T-SHIRT:

❑ CHILD SM. ❑ CHILD MED. ❑ CHILD LG.

❑ ADULT SM. ❑ ADULT MED. ❑ ADULT LG. ❑ ADULT X-LG.

HOW DID YOU FIND OUT ABOUT OUR PROGRAMS? _____

PLEASE READ BEFORE SIGNING:

I authorize Six Flags Worlds of Adventure (SFWOA) to use my child s name and photograph for education and public relations purposes related to SFWOA. In the event of an injury or illness when the provided emergency contact cannot be reached, I hereby authorize SFWOA and its designated hospital, doctor, nurse or other staff person, to provide the necessary medical evaluation, treatment or care for the above named child. Please list below any medication, allergies, physical, emotional, or social limitations of which medical personnel should be aware. Please be specific and use extra paper if necessary.

_____

_____

_____

EMERGENCY CONTACT: _____ NAME

RELATIONSHIP _____ PHONE # _____

SIGNATURE OF PARENT/LEGAL GUARDIAN: _____

DATE: _____

PRINT NAME: _____ RELATIONSHIP: _____

Marinelife Education
and Physical Science Programs

















New Name – Same Great Programs!

Six Flags
WORLDS of ADVENTURE
Wildlife Way

Marinelife Education Programs

At Six Flags Worlds of Adventure

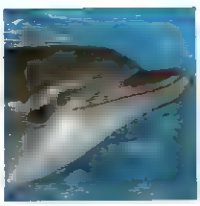
New Name...
Same Great Programs!

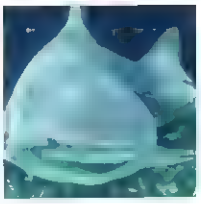
Six Flags Ohio and SeaWorld Cleveland have united to form one Mega Park, the new Six Flags Worlds of Adventure! We remain committed to marinelife education!

The quality educational programming you associated with SeaWorld remains a valued component of our new organization. Using familiar exhibits and staff, we continue to offer a variety of educational experiences designed to foster an appreciation for marine life and the world's oceans. Physics day, offered previously under Six Flags Ohio, continues to be offered by our Group Sales department.

FOR MARINE ANIMAL PROGRAMS CONTACT OUR EDUCATION DEPARTMENT AT:
(330) 562-8303 Ext. 2280
fax: (330) 995-2014
email: SFWOAEC@sftp.com

FOR PHYSICS DAY AND GROUP ADMISSIONS NOT LISTED IN THIS BROCHURE CONTACT GROUP SALES AT:
(330) 562-8303
Ext. 4262



Synopsis of Programming for the 2001-2002 School Year

Grade

1. **Outreach Programs** (see details) K-12
   Sept. 24, 2001 - April 19, 2002

2. **Instructional Field Trips:**
   Oct. 1, 2001 - April 5, 2002

   A. Ocean of Life K-3
   B. Ocean Communities 4-8
   C. Polar Expedition K-3
   D. Penguin Experience 4-8
   E. Ocean Pals ..... Preschool-K
   F. Sweetwater Seas 4-8
   G. Dangerous Animals of the Sea 4-8
   H. Shark Experience
      1. Level 1 ..... K-3
      2. Level 2 4-8
      3. Level 3 9-12
   I. Diversity Of Life 9-12
   J. In-Depth Studies ..... Gifted, 9-12, College

   K. M.B.E. (Marine Biology Exploration) K-8
      May 13-23, 2002

   L. Oceans and Motion
      (includes all components of last year's "Outdoor Classroom" and "Ocean Focus") Preschool-8
      May 29-31, 2002

   M. Physics Days (Contact **Group Sales** for more information about this ride-oriented Six Flags program)
      May 17th and 22nd, 2002

3. **Summer Programs:**

   A. Summer Seafari Camp Preschool-9
      June, July, and August, 2002

   B. Teacher Credit Courses and Workshops

4. **Shark Sleepover** K-12
   Most Friday nights, January through November



Outreach Programs

Six Flags Worlds of Adventure Wild.life. Wild Rides.

Our Outreach programs have been designed to bring the excitement of Six Flags Worlds of Adventure Marine Park to you! Select the Outreach programs that best fit your curriculum.

PLEASE NOTE: We do not bring live animals on our Outreach programs.



We are now booking for the 2001-02 school year but can take reservations for 2002-03 starting in January 2002.

DATES:
Our Outreach programs are offered school days from September 24, 2001 through April 19, 2002. Exact dates have not been established for 2003

TIMES:
Morning and afternoon sessions are available between 9 a.m. and 3 p.m.

FEES:

First 60-minute program	$250
Second program at same site	$150
All-day Programs: Whales, Sharks, Endangered Animals	$430

A travel surcharge will apply for schools outside Lake, Cuyahoga, Geauga, Portage, and Summit counties. A standard fee of $200 is charged for all overnight travel. We can only accommodate one school per day.

PRIMARY AND INTERMEDIATE (K-6)

Kelp Beds to Icebergs *(60-minute program)*
Students learn about marine mammal adaptations through dress-up and role-playing activities. A special whale demonstration brings life-size whale models into the assembly. [A different set of activities is presented for grades K-3 and 4-6.]

Whales *(all-day program)*
Students learn the similarities and differences between toothed and baleen whales through life-size whale models, touching real whale bones and baleen.

Penguins *(60-minute program)*
Students explore the environments, lifestyles, and history of several species of penguins through a variety of fun-filled activities including our penguin dress-up and life-size whale models. [A different set of activities is presented for grades K-3 and 4-6.]

Sharks *(all-day program)*
Students explore the fascinating world of sharks through this informative assembly program. Students observe life-size models of sharks, touch shark skin and teeth, and learn about the importance of these often misunderstood, yet sensational predators.

Endangered Animals *(all-day program)*
Students will learn about animals that are currently endangered, such as the manatee. They will also hear about the success stories of the American bald eagle, gray whale and others that have come back from the brink of extinction. Interactive and entertaining, this program will help students learn how we all can help save our planet.

JUNIOR HIGH AND HIGH SCHOOL (7-12)

Whales *(60-minute program)*
Students investigate the earth's largest mammals - the whales. They compare lifestyles and adaptations of toothed and baleen whales through activities using life-size whale models, whale bone and baleen.

Sharks *(60-minute program)*
Students explore the fascinating world of sharks through this new, exciting assembly program. Students observe life-size models of sharks and learn about the importance of these often misunderstood, yet sensational predators.

Instructional Field Trips





VISIT US AND ENJOY LEARNING AT SIX FLAGS WORLDS OF ADVENTURE!

During the fall and winter, three fascinating buildings: Penguin Expedition, Under the Sea Aquarium, and Shark Experience are living learning centers for education programs.

FALL/WINTER PROGRAMS

A. Ocean of Life (K-3)
Students learn about the fundamentals of ecology by studying kelp bed and coral reef communities. (90-minute program)

B. Ocean Communities (4-8)
Students investigate the kelp bed and coral reef communities at Six Flags. They discover how animals are adapted to survive in their specific environments. (90-minute program)

C. Polar Expedition (K-3)
Students explore the environments at the top and bottom of our globe through a variety of creative activities and penguin observations. (90-minute program)

D. Penguin Experience (4-8)
Students take an ecological adventure into the icy Antarctic through the observation of penguins. (90-minute program)

E. Ocean Pals (Preschool-K)
Very young children take an imaginary voyage under the sea with Ocean Pals. Students learn about sea creatures in this fun-filled class that blends music, drama, and role-playing activities. (60-minute program)

F. Sweetwater Seas - The Great Lakes (4-8)
Students learn about the development, history, and ecology of the Great Lakes. Emphasis is placed on the animal populations, food chains, and effects of humans on the Great Lakes. (90-minute program)

G. Dangerous Animals of the Sea (4-8)
Intermediate students learn about some of the dangerous animals of the sea, their adaptations for survival and defense, and their roles in the ecology of the ocean.

H. Shark Experience (K-3, 4-8, 9-12)
Students learn about the mysterious predators of the sea - the sharks. They come face-to-face with several species in our Shark Experience building, develop a better understanding of sharks, and distinguish between fact and myth. A different set of activities is available for three different grade levels.
(90-minute program)

I. Marine Life Diversity (9-12)
Students come face-to-face with members of every major phyla of marine animals, from Cnidarians to Chordates. Through multimedia presentations, live animal observations, and demonstrations, students discover the diverse adaptations and habitats of marine animals.
(3-hour program)

J. In-Depth Studies (7-12)
Teachers can schedule advanced classes for either a series of visits or a single visit concentrating on a particular subject. In-Depth studies offered this year are:, Coral Reef Ecology, Careers, and Behavior and Training.



CALL NOW TO SIGN UP FOR A FALL/WINTER MARINELIFE PROGRAM

DATES:
Visit Six Flags Worlds of Adventure Marine Park on any school day from October 1, 2001 to April 5, 2002.

TIMES:
90-minute sessions are scheduled at 10:00 a.m. or 1:00 p.m.; 3-hour sessions at 9:00 a.m. or 1:00 p.m.

FEES:
$4.00 per person for 90-minute sessions
$5.00 per person for 3-hour sessions

Chaperons pay the same low admission rate.
One teacher per class is admitted free of charge.

SPRING PROGRAMS

K. Marine Biology Exploration (M.B.E.)
(formerly known as "Breach" or "MBA")

A FULL DAY OF EDUCATION AND FUN!
Teachers and students can earn their MBE (that's Marine Biology Exploration) together at Six Flags!

- **Marine ("Wildlife") park only.** Six Flags Worlds of Adventure is NOT OPEN to the general public during this program. ***Therefore the rides and regular summer shows will not be available.***
- The program begins at 9:00 a.m. and ends at 3:00 p.m.
- Each grade level is assigned to specific days. This enables us to gear programs to your students' specific needs.
- SELF-GUIDED TOUR OF ANIMAL ATTRACTIONS. At each attraction, a Six Flags instructor leads your students on their Marine Biology Exploration.
- ANIMAL SHOWS. Students will observe and participate in animal shows highlighting marine mammal training and adaptations at the **Dolphin** and **Sea Lion and Otter Stadiums.**
- For your convenience, one gift shop will be open.
- Food service areas are open on a limited basis. ***Box and catered lunches are available by ordering in advance.***
- Before you call, please determine which dates are most appropriate for your class. Attendance is limited, so plan ahead, and make your reservation early.

MBE SCHEDULE:
Elementary Students will be introduced to the wonders of the sea as they begin their adventure of the ocean in the Marine Biology Exploration program.



K-2

Mon. 5/13	*Fri. 5/17*
Wed. 5/15	*Tue. 5/21*

3-5

Tues. 5/14	*Mon. 5/20*
Thurs. 5/16	*Wed. 5/22*

6-8
Thurs. 5/23

Junior High students will learn more in-depth marine biology facts and also be introduced to careers in a marine life adventure park like Six Flags.

FEES: Students -all grade levels: $10.00

Students and chaperons pay the same low rate. One teacher per class will be admitted free of charge.

We request a chaperon-to-student ratio of **NO MORE than 1:5**

ADDITIONAL CHAPERONS BEYOND THE RATIO PERMITTED WILL PAY AN ADMISSION RATE of $20.00.

L. Physics Days*
*This program MUST be booked through our Group Sales Department (330 562-8303 ext 4262).

- Ride ("Wild Rides") park only. Six Flags Worlds of Adventure is NOT OPEN to the general public during this program. Therefore the animal attractions and regular summer shows will not be available.
- Experience physics in a fun environment! Put learning into action by applying physics and math-related concepts to our rides. Our thrilling new coasters will tempt your students to break the laws of gravity while catapulting them through heart-pounding curves and loops. How does Newton's First Law apply to rides on the Dodgems? What keeps the train on the track at the top of each loop of Batman Knight Flight? Learn the answers to these questions and more during Physics days! Your students will have fun learning, and you'll be confident that these lessons will stay with them for a lifetime!
- Each teacher will receive a FREE workbook and disk filled with activities and exercises specifically geared toward their education level.

DATES:
Friday, May 17
Wednesday, May 22

FEES:
$17.99 per person. One free chaperone ticket for every ten tickets purchased.

M. Oceans and Motion (includes all components of last year's "Outdoor Classroom" and "Ocean Focus")

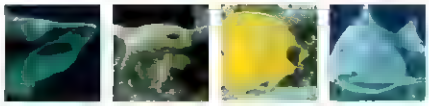
We are open to the general public during this program, and both rides and marine attractions are available to your group. The marine portion of the program consists of one educational animal show and self-guided visits to our animal attractions. The education show is designed especially for this program. Use this program as an opportunity to demonstrate principles of physical and marine science to your students. Various education and cultural organizations will also set up temporary displays.

DATES:
Wednesday, May 29 - grades K-2
Thursday, May 30 - grades 3-5
Friday, May 31 - grades 6-8

FEES:
$19.99 + tax per person.
The classroom teacher is admitted free of charge; all other chaperons pay the same low admission rate as the students.

Summer Programs





During the summer, we offer courses on a wide variety of marine topics.



A. Summer Seafari Camp

Summer day camp for preschool through 9th grade by individual enrollment. During the summer, we offer courses on a wide variety of marine topics. Organized by grade level, Summer Seafari Camp sessions meet for one or several consecutive days. Enrollment is for individuals rather than for groups.

To request a copy of the current Summer Seafari Camp brochure, please call the Education Department at (330) 562-8303, ext. 2280, or email us at SFWOAEC@sftp.com

B. Teacher/Adult Workshops and Field Studies

Graduate workshop credits from an accredited university will be available upon the successful completion of all requirements. Or just take them for fun! First time students seeking graduate credits must have a photocopy of their teaching certificate, diploma, or transcripts available at registration.

MARINE SCIENCE FOR TEACHERS

This three day workshop investigates the adaptations and environments of selected marine organisms, placing special emphasis on classroom activities. The parks animal exhibits are used as a living laboratory. (1 credit workshop; July 8-10, 2002; $295 credit; $185 non-credit)

ISLAND ECOLOGY FOR TEACHERS: THE BAHAMAS

Learn about the biology, geology, history, and culture of the Bahamas during this week-long trip to a marine education facility on Andros Island. Snorkel the third largest barrier reef in the world, and learn how to identify various marine animals. Island Ecology is designed to help you incorporate island ecology into your curriculum. (2 credit field course; June 21-29, 2002; $2,175 credit, $1,875 non-credit, fees include round-trip airfare to the field station, lodging in Ft. Lauderdale and Andros, and all meals on the island, except for a planned "night out" on Thursday the 27th.)

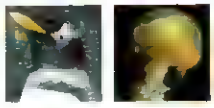
Additional Teacher Workshops may be offered. Marine Field Study for Teachers, an investigating of the temperate marine ecosystems of Cape Cod, is tentatively scheduled for 2003.

To receive more information and registration materials, please call the Education Department at (330) 562-8303, ext. 2280 Or e-mail us at SFWOAEC@sftp.com



Shark Sleepover Programs

Make Reservations for any educational program



Reservations are required for all education programs. We confirm reservations by mail. **Attendance for all programs is limited, so please book early.**

To make a reservation, please call the Education Department at: (330) 562-8303 Ext.2280 weekdays, 8:30 a.m. - 4:30 p.m. Or e-mail us at SFWOAEC@sftp.com.

For Physics Days or other group admission opportunities not listed in this brochure, please call Group Sales at 330-562-8303 Ext. 4262. Are you unable to attend one of our specialized events? We can accommodate group visits during normal operating days and you will still receive a special rate.

To help save time, please use the checklist below before you call.

___Which program(s) are you interested in?

___Which date would you prefer for your program? (For Marine Biology Exploration and Oceans and Motion, please refer to the program schedule in this brochure for grade-specific dates.)

___What is your school's name, mailing address, and phone number?

___What is the leader's name and home phone number?

___What is the grade level?

___How many students and adults will attend?

___What time will you arrive?

___Do you wish to purchase boxed or catered lunches for an Instructional Field Trip?

IF YOU NEED TO CANCEL YOUR RESERVATIONS, PLEASE NOTIFY THE EDUCATION DEPARTMENT IMMEDIATELY SO THAT WE CAN ACCOMMODATE OTHER SCHOOL GROUPS.

We reserve the right to refuse admission.
Due to situations beyond our control and for the health and safety of our guests and our animals, Six Flags Worlds of Adventure reserves the right to make alterations to certain programs explained in this brochure. This may include, but not be limited to, the availability of certain animal attractions and/or shows.

School and Scout groups can spend a fun-filled night at Six Flags Worlds of Adventure. Animal observations, games, and crafts are part of the fun. Sleeping with the sharks in the Shark Experience makes this an educational adventure that won't be forgotten!

To receive more information and registration materials, please call the Education Department at (330) 562-8303, ext. 2280 Or email us at SFWOEC@sftp.com.





Six Flags Worlds of Adventure
Marinelife Education Department
1100 Squires Rd
Aurora, OH 44202

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PARK MAP & GUIDE 2001

Six Flags WORLDS of ADVENTURE



Make Deer Park® Part Of Your Adventure!



SixFlags



DEER PARK Spring Water

Official Bottled Water Of Six Flags

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Welcome!

New for 2001 is the world's only X-Flight flying roller coaster! This one-of-a-kind thrill ride brings a new dimension of X-citement to Six Flags Worlds of Adventure and the 21st century. Relax in our FREE Hurricane Harbor waterpark. Don't miss the all-new Dolphin Show. Meet *Bugs Bunny* in *Looney Tunes* BoomTown and take in an action-packed show like the new *Batman* Water Thrill Spectacular!

Six Flags WORLDS OF ADVENTURE
Wildlife. Wild Rides.

Guest Services

First Aid Stations—Located near the *Superman* Ultimate Escape and Emporium Gift Shop. Paramedics and E.M.T.'s on duty at all times. Over the counter medications available at select gift shops.

Security—Security is located in the Picnic Pavilions behind the Texas Twister and can be contacted at Guest Services or at any retail outlet.

Guest Services—Located near the Main Gates. Services include check cashing, message center,vehicle assistance, lodging information and services for disabled guests.



Lost & Found—Lost and found items are turned into Guest Services. For safety reasons, all lost items on attractions can only be collected at the end of the operating day.

Check Cashing—Personal checks cashed with proper ID and Canadian currency exchanged at Guest Services.

Messages—You may leave messages at Guest Services. Sorry, we cannot make paging announcements.

Motorist Assistance—Available by simply contacting any Six Flags Worlds of Adventure employee and raising the hood on your vehicle.

Public Lockers—Refer to map symbols for locations. Lockers are limited.

Rest Rooms/Drinking Fountains—Located throughout the Park. Refer to map symbols for locations.

Wheelchair and Stroller Rentals—Available at the Park Rental stands across from the Main Gates. Six Flags does not reserve rentals and can not guarantee availability. Strollers are not permitted in show and exhibit areas. Stroller parking is available near these areas. Be sure to secure your stroller contents as Six Flags Worlds of Adventure is not responsible for any loss. Stroller identification tags are available at Guest Services free of charge.

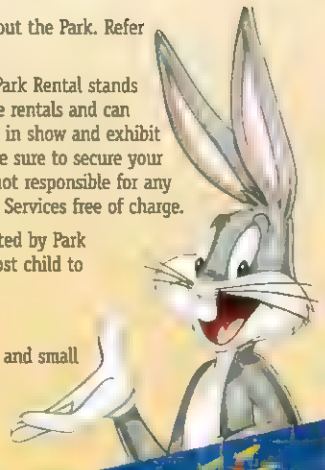
Lost Children/Lost Parents—Lost children are escorted by Park Team Security to wait for family members. Report a lost child to Guest Services at the Main Gates.

Telephones—Refer to map symbols for locations.

Public Picnic Facilities—Available for general public and small groups. Located outside the Park—ask Six Flags team members for exact locations.

ATM—See map for locations

Ohio Lottery—Available at the rental building in the Wild Rides Section.



sixflags.com

Six Flags 40th Celebration



Our Proud Corporate Sponsors:

PRINGLES
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AMERICAN EXPRESS Cards
Six Flags Card of Choice
Luvs
AMERICA Online
Aquafresh TRIPLE PROTECTION
SHERWIN WILLIAMS
HAWAIIAN Tropic

Park Policies



Our Park is primarily a family park with many small children as guests. Therefore, we have strict dress and conduct policies that we enforce for the safety and enjoyment of our guests. We reserve the right to refuse admission or eject from the Park, without refund, anyone who does not follow them.

Disrespectful conduct or behavior, such as vulgarity, hanging out in groups, loitering, intoxication, theft, excessive rowdiness and all other actions that negatively impact our guests or staff will not be tolerated and will result in ejection from the Park without a refund.

Animal Care—Please do not feed or pet the show animals. Community exhibits are available for your enjoyment. For the safety of our animals, please do not throw coins or other objects into animal habitats. To ensure a safe environment for our animals, we do not use straws or lids throughout the park.

We do not issue refunds.

Picnic baskets, coolers and carry-in food or beverage are not permitted in the Park.

Grills are not permitted in the public picnic area.

Clothing deemed offensive by Six Flags management is prohibited.

Smoking is prohibited in restrooms, show areas, exhibits, restaurants and shops. Smoking is permitted in the following designated areas only. Please look for signage posted in the listed areas:

- Maingate Bathroom Patio
- Western Village Restroom Area
- Beer Garden
- Skyscraper Area
- Boomtown Restroom Walkway
- Pavilions 1-11

Children ages 12 and under must be accompanied by an adult for admission.

Pets are not permitted.

We are not responsible for rain or inclement weather. We do not offer refunds or rainchecks upon admission under any circumstances.

No solicitation or distribution of literature.

No throwing of any objects.

No running.

No camping or overnight parking in lot.

Line jumping or cutting in line, regardless of the reason, may lead to dismissal from the Park without refund. This rule is strictly enforced.

Absolutely no glass items are permitted in the water park.

GENERAL RIDE POLICIES

Please read signage before participating on any attraction.

Shirts and shoes are required at all times (except in Water Park).

No eating, drinking, or smoking permitted on rides.

Expectant mothers, guests with back, neck or bone injuries, heart problems, or who have had a recent illness should be extremely cautious in choosing rides.

Carry-on items are not permitted on rides. Please leave personal belongings with a non-riding friend or in a public locker.

Six Flags Worlds of Adventure and its employees are not responsible for any lost, stolen or misplaced guest articles.

Proper swimming attire is required for water activities. Jewelry, jean shorts, cut-offs, swimsuits with zippers or buttons are not permitted. The wearing of t-shirts on water slides is prohibited.

Diaper-dependent children/guests must wear swim diapers in order to participate in water attractions.

The changing of diapers in the water area is strictly prohibited.

All general policies apply to water attractions.

Entering restricted areas is prohibited.

We will make every effort to reopen rides being serviced or those not operating due to inclement weather as soon as possible.

Persons with a disability, please refer to the "Guide to Ride" brochure for further information, available at Guest Services.

*Parents may trade the supervision of small children in order to enjoy the same ride. (Example: Two parents may wait in line along with child for a ride. When it is their turn to board, one parent rides while the other parent watches the child. Then, parents switch places and the other parent is able to ride.)

**Six Flags management may choose to limit or cease the operation of the parent swap program on certain rides and operating days without notice.*

Your Responsibility—Section 171.551 of the Ohio Revised Code states that no rider shall fail to do any of the following: 1. Heed all written warnings and directions that require a person to meet certain conditions or refrain from certain actions regarding an amusement ride, as determined by rule by the Director of Agriculture. 2. Refrain from behaving or acting in any manner that may cause injury or contribute to injuring himself or other people while occupying an amusement ride.

Dining



Wild Rides Section

13 **Juke Box Café**—Air-conditioned dining, flame-broiled cheeseburgers, chicken tender dinners, club sandwiches, grilled chicken caesar salad, fresh-baked desserts, kid's meals

14 **All American Grille**—Flame-broiled burgers, grilled chicken, fries

15 **Maingate Pizza Hut**—Personal Pan Pizza, breadsticks

16 **Gotham City Pizza**— Pizza and other Italian specialities.

17 **French Fry Company**—Natural-cut fries, loaded hot dog dinners, bratwurst dinners, soft drinks

18 **Twister Ice Cream**—Soft-serve ice cream cones, soft drinks

19 **Saddle Sore Saloon**—Cold beer, soft drinks, snacks

20 **Mr. Hero Express**—Roman Burgers, grilled steak sandwiches, fries

21 **Ricochet Joe's**—Hot dogs, ICEE, Nachos Grande, soft drinks

22 **Funnel Cakes**—Funnel cakes with toppings

23 **Maingate Snacks**—Cotton candy, caramel apples

24 **Beer Garden**—Cold beer, soft pretzels, soft drinks

25 **Ice Cream Parlor**—Hand-dipped ice cream, soft drinks

26 **Drive In**—Soft serve ice cream, cotton candy, Nachos Grande, soft drinks

27 **Cadillac Grille**—Serving Subway—Located across from *Superman*

28 **BoomTown Smoothies**—Fresh fruit smoothies

29 **Taco Bell**—Taco Bell Express

30 **KFC Express**—KFC Express

31 **Island Oasis**—Burgers, hot dogs, ICEE, cold beer

32 **Beachcombers'**—(Open only on selected days) Cafeteria-style air-conditioned dining, homemade seafood gumbo, Italian lasagna and other house specialties, salads and assorted desserts.

33 **Subway**—Deli Sandwiches

Wildlife Section

34 **SwampWater Jack's**—Beef and chicken fajitas, dinner salads and fresh-baked desserts.

35 **Shorty Pete's BarB-Q**—Texas-style barbecued chicken and ribs smoked using hickory and oak woods and grilled over mesquite for additional flavor. Kid's meals, salads and fresh-baked desserts.

36 **Woodside Café**—(Open on selected days) Chicken and beef brisket barbecue served on a fresh roll. Deli sandwiches, kid's meals, salads and fresh-baked desserts.

37 **Pizza Pier**—(Open on selected days) Individual pizzas, salads and fresh-baked desserts.

38 **Platters**—Fried chicken dinners, deli sandwiches, kid's meals, salads and fresh-baked desserts.

39 **Lakeside Café**—Deli sandwiches, cheeseburgers, kid's meals and fresh-baked desserts.

12 **Papaya Pete's**—Smoothies

Picnic Pavilions

Wild Rides Section

A - C **Public Picnic Facilities**

1 - 11 **Reserved Picnic Pavilions** (Company Picnics)

Wildlife Section

D - F **Public Picnic Facilities**

12 **Great Lakes Catering Reserve** (Company Picnics)

Shopping

Wild Rides Section

40 **Antique Photo**—Dress up in clothing from yesteryear with your family and friends and pose for your antique photo.

41 **Coyote Creek Candies and Fudge**—Featuring homemade fudge, salt-water taffy, M&M products and a large variety of other candies.

42 **Wild Bill's Toys**—Fun for kids of all ages.

43 **Stagecoach Gift Exchange**—Country style gifts and collectibles.

44 ***Batman* Shop and Photo**—Merchandise featuring the one and only *Batman*.

45 **Jewelry Stand**

46 **Kaman's Caricature and Airbrush**

47 **Six Flags Clothiers**—Featuring Six Flags merchandise including souvenirs and apparel.

48 **Rental Building**—Lockers, Strollers, Wheelchairs. Film, and Ohio Lottery.

49 ***Looney Tunes* Old Tyme Emporium**—All of your favorite Warner Brothers characters come to life in a turn-of-the-century gift shop for adults and kids alike.

50 **Hats and Sunglasses Shop**

51 **Looking Glass Photo**—Get your Six Flags Worlds of Adventure souvenir photo here.

52 **Totally *Tweety***—Featuring the one and only Tweety!

53 **SFWOA Kids Club**—You'll find lots of fun treasures for your little ones! Featuring *Looney Tunes*, *DC Comics*, and the *Cartoon Network*.

54 **Island Traders Gift Shop**—Get your swimwear and gear here.

Wildlife Section

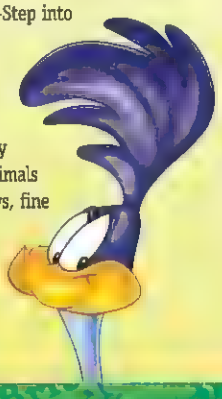
55 **Bermuda Divers**—It's a shopping frenzy at Bermuda Divers, where you will find many intriguing collectible gift items, Mission: Bermuda Triangle merchandise and souvenir items relating to sharks and the mysterious creatures of the deep.

56 **Worlds of Adventure Emporium**—Capture your special memories with supplies from our fully-stocked film counter. T-shirts, stuffed animals and a large collection of souvenirs just about guarantee that you will find that perfect gift or memento.

57 **Hot Tropics**—Find t-shirts, sweatshirts and fashion clothing in all colors and designs, including children's fashions in youth, toddler and infant sizes. We have your size!

58 **Asian Adventures**—Take a journey to the Orient and experience a Pearl Diving show in a Far Eastern setting. Purchase a pearl and have it set into a wide variety of settings or choose your favorite Asian souvenir.

59 **Wild Things**—Step into the jungle as you explore nature's wonders, great and small. Here you will find many species of wild animals represented in toys, fine gifts, jewelry, books and collectibles.



Rentals & Extras

Double Stroller	$13.00/day
Single Stroller	$10.00/day
Wheelchair	$9.00/day
Electronic Wheelchair*	$30.00/day
Inner Tube Rental	$4.00/day
Double Inner Tube Rental	$6.00/day
Life Jackets	Free *($5 refundable deposit)*

Thunder Alley Speedway	
Single rider	$6.00 per ride
Double rider	$8.00 per ride
Red Canyon Rock Wall	$6.00 per climb
Sky Coaster *(Discounts available for two or three flyers)*	$24.99

Most rentals require a refundable deposit.
Prices are subject to change.
**Requires photo identification*

Rides, Games & Attractions

Wild Rides Section

See **Wildlife Section** *map for other attractions.)*

50 **BoomTown Boat Dock**—Take a pleasant trip to your favorite side of the lake on our passenger boats *Aurora Belle* and *Cuyahoga Queen.*

51 **Boardwalk**—The shoreline walkway between Wildlife and Wild Rides Sections.

RIDES

52 **X-Flight**—New flying roller coaster

53 **Raging Wolf Bobs**—Roller Coaster

54 **Grizzly Run**—White Water Rapids adventure

55 ***Batman* Knight Flight**—Floorless Coaster

56 **Texas Twister**—You'll be twisted around while going up and down.

57 **Silver Bullet**

58 ***Roadrunner* Express**—A toon-rific coaster for younger thrill seekers.

59 **Dodgems**

70 **Carousel**—Historic 1918 Marcus Illion Carousel

71 **The Haybaler**

72 **Double Loop**—Roller coaster.

73 **The Villain**—Giant wooden roller coaster

75 **The Deer Park Plunge**—Water flume ride.

76 **Serial Thriller**—Suspended looping coaster.

77 **Merry Oldies**—Antique Cars



78 **Mr. Hyde's Nasty Fall**—13-story free fall ride

79 **Americana**—Classic ferris wheel

80 **Time Warp**—Head-spinning thrill ride

81 **Yo-Yo's**

82 ***Superman* Ultimate Escape**—Vertical spiraling coaster

83 **Mind Eraser**—Boomerang roller coaster

84 **Music Express**

85 **Bellaire Express**

86 **Skyscraper**

87 **Black Widow**

88 **El Dorado**

89 **Big Dipper**—1925 classic wooden coaster



90 **Shipwreck Falls**—Family Shoot-the-Chute ride

91 ***Looney Tunes* Boomtown**—The World's Best Kids' Area! Official Ohio home of *Bugs Bunny* and friends featuring seven rides, Foam Factory and Larger Than Life play complex.

HURRICANE HARBOR

92 **Wave Pool**—25,000-Square-Feet of Fun

93 **Turtle Beach**—Water Area Just For Kids

94 **Stingray Wet Slides**—Race your friends on 3 superfast slides

95 **Hook's Lagoon**—A huge water playground for the whole family.

96 **Calypso Creek**—Grab a raft and relax

97 **Neptune's Falls**—Triple the fun! Classic, curvy waterslides.

GAMES

25 **Boot Hill/Western Games**

26 **Derby Racer**

27 **Highstriker**

101 **50's Games Area**

102 **Games Complex**

103 **Arcade**



INTERACTIVE ATTRACTIONS*

105 **Skycoaster**

106 **Gold Nugget Arcade**

107 **Red Canyon Rock Climbing Wall**

108 **Thunder Alley Speedway**

109 **Volleyball Courts**

41 **New Arcade**

**Extra fees. Certain height restrictions may apply.*

Ride Restrictions (Please see rules signs at attractions)

Because your safety is important to us, these height restrictions apply:

RIDES: Guests must be **over 36" tall** to ride and **guests between 36" and 42" tall** must be accompanied by an adult: *Mission: Bermuda Triangle, Shipwreck Falls.* Guests must be **over 40"** to ride and guests **between 40" and 48" tall** must be accompanied by an adult: *Road Runner Express.* Guests **under 42" tall** must be accompanied by an adult to ride: *Americana, Skyscraper, Bellaire Express, Carousel, Haybaler, Grizzly Run.* Guests must be **over 42" tall** to ride: *Sky Coaster, Yo-Yo's.* Guests **under 48" tall** must be accompanied by an adult to ride: *Deer Park Plunge, Scrambler, Merry Oldies.* Guests must be **over 48"** tall to ride: *The Villain, Time Warp, Mind Eraser, Big Dipper, Dodgems, Raging Wolf Bobs, Mr. Hyde's Nasty Fall, Double Loop.* Guests must be **over 50" tall** to ride: *The El Dorado, Silver Bullet.* Guests must be **over 52" tall** to ride: *Serial Thriller, Superman Ultimate Escape.* Guests must be **over 54" tall** to ride: *Batman Knight Flight.* Guests must be **over 55" tall** to ride: *Texas Twister.* Guests must be **over 58" tall** to drive alone at *Thunder Alley Speedway* and guests must be **over 40" tall** to ride with a driver who is **over 58" tall**, 18 years old old older with a current driver's license.

LOONEY TUNES BOOMTOWN: Guests must be at least **36" tall** to ride alone. Guests **over 54"** must be accompanied by a child to ride: *Larger Than Life Nets, Marvin the Martians Rocket Ships, Speedy's Big Trucks, Daffy's Sub, Taz's Twister, Tweety's Treehouse, Yosemite Sam's Train, Wile E. Coyote's Balloons, Larger Than Life Net Climb. Larger Than Life:* Guests **under 48"** must be accompanied by an adult: *Great Acme Raft Race, Looney Tunes Gotcha Games:* Guests **under 5 years** old must be accompanied by an adult.

HAPPY HARBOR: Guests **over 54" tall** must be accompanied by a child.

HURRICANE HARBOR: Height restrictions apply throughout Turtle Beach. Please see guidelines at location. All children under 48" tall must be accompanied by an adult: *Hurricane Bay, Calypso Creek.* Adults must be accompanied by a child: *Turtle Beach, Hook's Lagoon.* Guests must be over 42" tall to ride: *Neptune's Falls.* Guest must be over 48" tall to ride: *Stingray Slides.*

An accompanying adult is considered to be 16 years or older. If you don't see height restrictions for a particular ride listed here, check the entrance of the attraction. Height restrictions and ride names are subject to change without notice at any time during the course of the season.

Spectacular Shows

Wild Rides Section

Daily show times are available at Guest Services and at each theatre location. Showtimes subject to change, all outdoor shows are weather permitting.

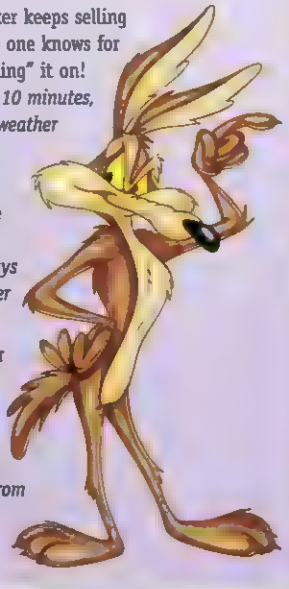


What's Up Rock?—It's the rockin'-est rabbit around, *Bugs Bunny!* Along with his pals, they tear up the stage in a show you don't want to miss! And at the end of the show, you can meet the stars up-close and personal!
Coyote Creek (near the Rock Wall), approximately 15 minutes, plays daily from Opening Day to Labor Day weekend, weather permitting.

Rockin' At Rockville—The 50's come to life and Rockville High is the place! Come to the Palace Theatre, in the heart of Rockville, and watch as Bobby loves Susie, but Susie loves Elmo, but... well, you get the idea! Featuring hit songs from the era that was FUN with a capital "F!"
Palace Theatre, approximately 25 minutes, plays daily from Memorial Day to Labor Day weekend.

Street Magic—See our magician amaze and confuse, amuse and confound, right there in front of you on the midway! No special trap doors for this guy, it's all magic, magic, magic!
Various midway locations throughout the day, approximately 10 minutes, plays daily from Opening Day to Labor Day weekend, weather permitting.

RainMaker—Back by popular demand, Doc Snooker keeps selling his secret brand of cure-all to unsuspecting folks! No one knows for sure exactly what's in it, but his clients keep "splashing" it on!
Coyote Creek (next to Antique Photos), approximately 10 minutes, plays daily from Opening Day to Labor Day weekend, weather permitting.



Science Guy—See our own Dr. Fizix as he applies the laws of the universe to everyday life! It's revenge of the nerds all over again!
Entrance to Boomtown, approximately 10 minutes, plays daily from Opening Day to Labor Day weekend, weather permitting.

Denim and Diamonds—Come sing along with our three beautiful ladies in our tribute to female country tunes and performers! You'll want to sing and dance along with this toe-tappin', hand-clappin' musical delight!
Coyote Creek, approximately 20 minutes, plays daily from Memorial Day to Labor Day weekend, weather permitting.

General Information

General Use Admission	$37.99
Junior Admission (Children under 48")	$18.99
Children 2 and under	FREE
Seniors 61 and over	$18.99

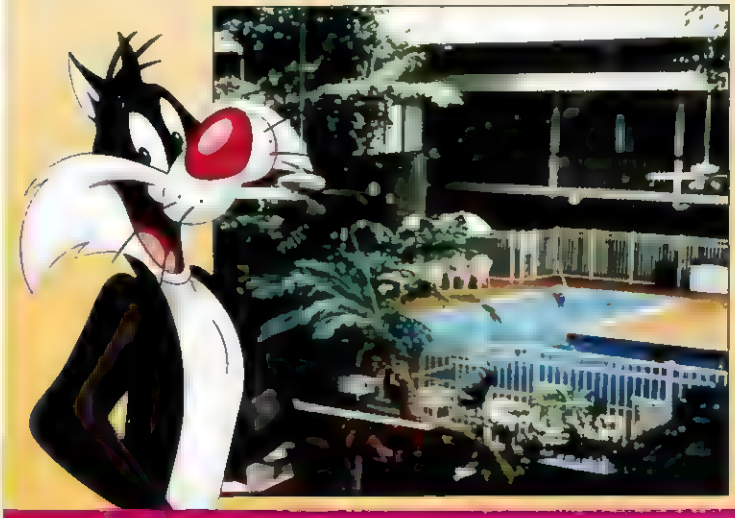
Promotional discount based on general use admission unless stated otherwise. Promotional offers cannot be combined. Prices subject to change without notice.

Season Passes—See Guest Services for current pricing.

Group Rates—Special admission for organized groups including schools or churches and companies (20 person minimum). Reservations necessary. For complete tour and travel packages or more information, contact Group Sales at (330) 562-8303, ext. 349 or write Group Sales, Six Flags Worlds of Adventure, 1060 N. Aurora Rd., Aurora, Ohio 44202.

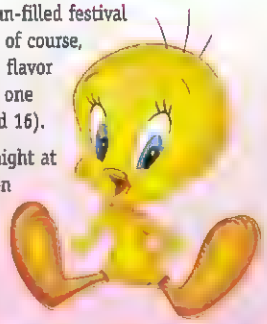
Hotel—Visit the Six Flags Hotel of Ohio located just 1/4 mile away. 1-800-877-7849.

Camping—Visit the Six Flags Silverhorn Camping Resort. Campsites open May-October. For more information call (330) 562-4423.



Special Events

Oktoberfest—Roll out the barrel and prepare for a fun-filled festival of polka, pierogies, lots of ethnic entertainment, and of course, rides galore! Six Flags Worlds of Adventure brings the flavor of the Old World right here to Northeast Ohio. This is one event you won't want to miss! (September 14, 15, and 16).



Fright Fest—Beware of things that go bump in the night at Six Flags Worlds of Adventure's superspooky Halloween event, Fright Fest. There's something for everyone including the area's premier haunted house, Brutal Planet! Even tiny monsters can collect ghostly goodies along the trick-or-treat trail. Stop by, if you dare! (Weekends in October)

Your Guide to Fun at Six Flags Worlds of Adventure



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CNIC PAVILIONS
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ows & Attractions

Boat Dock—Take a pleasant trip
ite side of the lake on our
ats *Aurora Belle* and *Cuyahoga*

Bermuda Triangle—A high-
derwater adventure with
e and state-of-the-art flight
hnology to give the sensation of
ep sea dive aboard a high-
nersible craft. *Closed Captioning*
n request.

4-D Hi-Tech Adventure—This
s movie is a multi-sensory/
experience found nowhere else
st, and features the hilarious
y and his pirate crew. (Caution,
may be too intense for young
participants get wet.)

erience—A moving walkway
der huge, curved windows
ace-to-face with more than a
in a natural habitat. *Closed*
ailable upon request.

xpedition—More than 100 polar
three species of flighted birds
lice" of the chilly Antarctic.

Sea Aquarium—Twenty
play the inhabitants of the world's rivers, lakes and oceans, including a stingray touch pool.

123 **Wild Skies**—Birds of a feather flock together at the Woods Arena. Numerous aquatic and exotic species, some never before seen in such presentations, take to the skies in a free-flight exhibition that literally bring the audience right into the show. Set amid a lush, rocky environment complete with a logoon, guests won't want to let this exciting new show "fly" by.

124 **Sea Lion and Seal Community Pool**—These very social animals and their offspring are from the park's rescue and rehabilitation program.

125 **Garden of Discovery**—This award-winning garden, with both innovative and interactive elements, is designed to meet the needs of all guests, including those with disabilities.

126 **Pearl Diving**—Witness one of the last remaining pearl oyster diving exhibitions in the country, as our Ama divers challenge the depths to retrieve pearl-bearing oysters.

127 **NEW! Dolphins**—Dolphins have inspired awe and wonder in humans for centuries, and this summer is no exception! Six Flags Worlds of Adventure presents Dolphins, a fascinating, upbeat look into the world of the bottlenose dolphin. These beautiful animals display amazing strength and power, while also demonstrating the tender bond that develops between animal and trainer. The ever-smiling dolphins also have a playful sense of humor, so guests should be prepared for a splashin' good time!

128 **NEW! *Batman* Water Thrill Spectacular**—*Batman* and *Robin* meet *Two-Face* and the *Riddler*, in a good vs. evil battle at the Gotham City waterfront boardwalk. Wild boat stunts, fiery explosions, and dangerous high falls make this show a "must see!"

129 **Happy Harbor**—A 3-acre adventure playland for children and parents features a 50-foot-high net climb, water maze and slippery slides, **plus 3 exciting rides "Boardwalk Casino," "Typhoon" & "Bounty."**

130 **The Do-It-Yourself Sea Lion Show**—Starring Skip and Dudley as the hilarious hosts of a "do-it-yourself" home improvement program. These handyman wanna-bes tackle even the simplest of remodeling tasks with disastrous—and totally hysterical—results. Chaos-causing otters and incredible walrus join Skip and Dudley in a humorous parody that epitomizes the show's slogan, "Why pay to have it done right when you can do it yourself?"

131 **Animal Actors**—Every dog has its day in this production that everyone is sure to love starring a cast of hilarious hounds, feisty
elines, and more than a few surprise guests! These amazing animals perform unbelievable climbing, jumping and balancing feats while tickling your funny bone at the same time! The "stars" of All-Star Pets include a cast of adopted dogs and cats from area animal shelters.

133 **Batray Cove**

134 **Sting Ray Bay**

NOTICES

- Many areas of Six Flags Worlds of Adventure have remained natural habitat settings. These areas are home to wild ducks, geese and other small animals. For your safety, please do not interact with these animals. Please be aware that the terrain of these areas may be uneven with tree roots and other naturally-occurring conditions.
- Use, reuse or reproduction of all photographs or movies for commercial purposes without the express written consent of Six Flags Worlds of Adventure is strictly prohibited.
- You may be videotaped or photographed for publicity, advertising and other documentation purposes by park personnel. If taped or photographed individually or with a small group, you will be asked to sign a release form.
- Please take the necessary precautions to protect anything that may be damaged by water or salt water as Six Flags Worlds of Adventure cannot be held responsible for damage to personal items.
- Six Flags Worlds of Adventure is not responsible for any personal items lost.

General Information

General Use Admission	$37.99
Junior Admission (Children under 48")	$18.99
Children 2 and under	FREE
Seniors 61 and over	$18.99

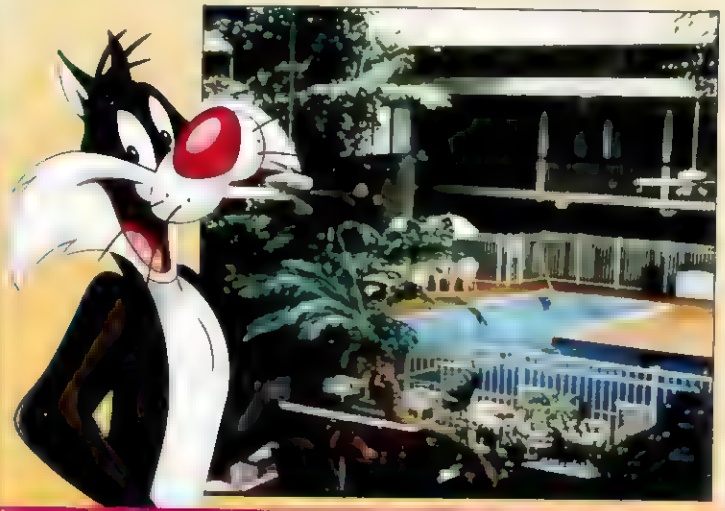
Promotional discount based on general use admission unless stated otherwise. Promotional offers cannot be combined. Prices subject to change without notice.

Season Passes—See Guest Services for current pricing.

Group Rates—Special admission for organized groups including schools or churches and companies (20 person minimum). Reservations necessary. For complete tour and travel packages or more information, contact Group Sales at (330) 562-8303, ext. 349 or write Group Sales, Six Flags Worlds of Adventure, 1060 N. Aurora Rd., Aurora, Ohio 44202.

Hotel—Visit the Six Flags Hotel of Ohio located just 1/4 mile away. 1-800-877-7849.

Camping—Visit the Six Flags Silverhorn Camping Resort. Campsites open May-October. For more information call (330) 562-4423.



Special Events

Oktoberfest—Roll out the barrel and prepare for a fun-filled festival of polka, pierogies, lots of ethnic entertainment, and of course, rides galore! Six Flags Worlds of Adventure brings the flavor of the Old World right here to Northeast Ohio. This is one event you won't want to miss! (September 14, 15, and 16).



Fright Fest—Beware of things that go bump in the night at Six Flags Worlds of Adventure's superspooky Halloween event, Fright Fest. There's something for everyone including the area's premier haunted house, Brutal Planet! Even tiny monsters can collect ghostly goodies along the trick-or-treat trail. Stop by, if you dare! (Weekends in October)

1060 North Aurora Road • Aurora, Ohio 44202
(330) 562-7131 • Fax (330) 562-7020
www.sixflags.com

February 12, 2002

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FEB 12 2002

BY HAND

Ms. Ann D. Terbush, Chief
Permits, Conservation and Education Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway, Room 13705
Silver Spring, Maryland 20910

Re: Funtime, Inc. d/b/a Six Flags Worlds of Adventure ("Six Flags")
Marine Mammal Import Permit Application
File No. 1004-1656 (the "Application")

Dear Ms. Terbush:

This is submitted in response to the agency's January 28, 2002 correspondence relating to the Application.

The submission of this additional information and other materials further supports issuance of the requested permit.

Introduction

A. Contents.

The items noted in the above correspondence are addressed sequentially below. For ease of reference, the documents noted in the annexed Index of Attachments are incorporated herein.

B. The Application.

Six Flags requests a permit to import two killer whales (Orcinus orca), one female from Marineland, S.A., Antibes, France (named "Shouka"), and one male from Mundo Marino, Buenos Aires, Argentina (named "Kshamenk"), to its park in Aurora, Ohio. The whales are to be incorporated into Six Flags' breeding program.

C. This Application Involves a Unique Opportunity.

This Application involves a unique opportunity to enhance the welfare of two individual killer whales while promoting conservation through breeding.

Shouka was born in Marineland, S.A. and has become sexually mature. The dominating male in her group of killer whales, who is likely to mate with her, is her father Kim. Kim has already fathered the four killer whales born in Marineland. Despite the partitions provided between the various Marineland pools, it is practically impossible to avoid all direct physical contact between the different members of the group. Consequently, Marineland has determined that it is in Shouka's best interest to place her in another facility where she can breed without further concentrating the gene pool.

Kshamenk, rescued from a stranding nearly a decade ago, has demonstrated his breeding potential with a former mate. He is now the sole killer whale at his facility and Mundo Marino has determined that it is in Kshamenk's best interest to place him with a companion animal with whom he can breed while adding diversity to the gene pool as he is the only killer whale from South America currently housed in a public display facility.

In light of the above, this Application involves a truly unique opportunity for Shouka, Marineland, Kshamenk, Mundo Marino and Six Flags to foster killer whale breeding and conservation.

D. Procedural History.

The October 27, 2001 Application was received by NMFS as complete on October 29, 2001. Thereafter, the agency distributed same. On November 30, 2001, notice of the Application was published in the Federal Register. On December 31, 2001 the public comment period closed. The agency responded to Six Flags' requests for copies of the comments on January 9, 2002. Thereafter, the agency indicated it had some questions relating to the Application, which were eventually provided to Six Flags in January 28, 2002 correspondence. At that time, the agency noted that it would be re-opening the public comment period on the Application "as a public hearing is not warranted, because NMFS has determined that the issues raised by the comments can be clarified by written information." Though Six Flags does not necessarily concur in the necessity for or appropriateness of such additional public comment period, the following information is provided without prejudice.

Additional Information

1. Kshamenk's Stranding, Rehabilitation and Lawful Placement with Mundo Marino.

The propriety of Kshamenk's rescue and permanent placement with Mundo Marino under Argentinean law is evidenced by the Secretariat of Sustainable Development and Environmental Policy Ichthyologic and Agriculture Directorate Form "C" Marine Mammal Ingress Certificate provided with the Application. The Certificate notes that he is maintained under lawful authority after having been a beached animal. This documentation by the Argentinean government, provided along with a certified translation as part of the Application, should be dispositive of the agency's question. (Attachment 10.) Nevertheless, without prejudice, the annexed Mundo Marino, "Report Regarding the Stranding, Rehabilitation and Definitive Possession of Kshamenk" (Attachments 1, and 2-20) is provided. Significantly, the attachments to the Report include several affidavits from documented eyewitnesses to the stranding, and contemporaneous letters and reports from members of the scientific and marine mammal communities recommending that Kshamenk be maintained at Mundo Marino. Also provided is a corroborating statement from the attending veterinarian directly responsible for Kshamenk's care. (Attachment 21.)

In summary, the available evidence makes clear that Kshamenk's stranding, rehabilitation and placement with Mundo Marino were proper and lawful.

2. CITES Export Permits.

The Argentine export permit application is pending and it is understood and anticipated that the proposed export is consistent with applicable regulations. The French export permit has been issued and is annexed. (Attachment 22.)

3. Breeding Program.

The Application seeks to establish a killer whale breeding program at Six Flags. This program would be part of the larger cooperative effort directed towards enhanced breeding of killer whales maintained at public display facilities in the care of humans. The Co-Chair of the American Zoo and Aquarium Marine Mammal Taxon Advisory Group (the "TAG") has noted the importance of this effort. (Attachment 23.) As the agency may be aware, the TAG is the only body that oversees the cooperative breeding of marine mammals within United States zoological facilities. Significantly, the TAG has endorsed the proposed importation and breeding.

Moreover, as noted in the comments of the Alliance of Marine Mammal Parks and Aquariums,

> . . . the population of killer whales in U.S. public display facilities is relatively small. The addition of these two animals has important ramifications for their breeding potential and the overall genetic diversity of this species within this country's zoological parks and aquariums.
>
> Zoological institutions have seen tremendous advances in recent years in their breeding programs. Animals born in zoological parks and aquariums represent between 43 and 70 percent of marine mammals in these facilities today, depending on the species. This compares to three to six percent in 1976. We are seeing second and third generation births. These breeding programs have also provided the opportunity to gather information on many aspects of marine mammal reproductive biology difficult to obtain from wild populations.
>
> The zoological community has worked diligently through the commitment of substantial research dollars to develop these successful breeding programs. Six Flags has been an important contributor to this research in the past and will continue such efforts in the future.

Unlike other marine mammals, there are no scientifically identified sub-species of Orcinus orca. Consequently, the breeding activities envisioned here, as noted in the TAG correspondence, would contribute to the genetic diversity of a limited killer whale population which includes instances of successful breeding of animals from different regions. (Attachments 13, and 23-24.) For example, Sea World has successfully bred Pacific Northwest and Icelandic killer whales on five different occasions that resulted in live births.

Significantly, Dr. Ricardo Bastida, Director of Marine Mammal Working Group (National University of Mar del Plata), Titular Professor – Marine Sciences Department (National University of Mar del Plata), Main Researcher CONICET, has noted:

> From the scientific standpoint, Kshamenk's genetic contribution to the captive populations in the Northern Hemisphere will be invaluable. That will notably facilitate the diversification of the

> genetic capacity of the Orca groups actually captive, and probably will enable future generations to have better biological and sanitary alternatives.
>
> Consequently, the Kshamenk case may evolve into a paradigmatic event, since it is the last real alternative for captive Orcas throughout the world to get a profound genetic enrichment. We should remember that given the regulations in most of the countries, the incorporation of new Orca specimens from the wild is practically impossible.
>
> Thus better genetic exchanges will be possible and surely it will be possible to configure an international Orca stud-book in order to ensure – for many decades the best crossbreeds among different groups that live in different aquaria throughout the world.

(Attachment 13.)

4. Killer Whales in the Waters off Argentina.

This request does not appear applicable or relevant given past agency practice and that this permit does not involve a take from the wild. The Application merely seeks to import Kshamenk, a killer whale rescued from a stranding. He has been rehabilitated and lawfully housed at Mundo Marino for nearly a decade. At the time of his rescue, Kshamenk was estimated to be at least one (1) year of age and thus was not pregnant, lactating or less than eight (8) months old. The maintenance of killer whales in Argentina is regulated by the government and authorization to maintain Kshamenk has been furnished to the agency. Moreover, the Argentine government strictly controls any takes from the wild. Consequently, the activity to be conducted under this permit request will have no detrimental impact upon killer whales in the waters off Argentina or the ecosystem. In any event, without prejudice, the annexed information is provided with respect to the killer whales in and around Argentine waters. (Attachment 25.)

5. Transport Details.

The Application included considerable details with respect to the transports. As noted in the Application, the transports will be in accordance with professionally accepted practices and in compliance with all applicable regulations, standards and conditions set forth under the Marine Mammal Protection Act, Animal Welfare Act and Lacey Act. The transport will comply with

APHIS regulations 9 C.F.R. § 3.116, Care in transit. (See Application.) Accordingly, this is more appropriately an APHIS matter and that agency has found the Application to be in compliance with the Animal Welfare Act. Nevertheless, without prejudice, the following additional information is provided. The truck transport from the originating institutions to the respective airports is estimated to be approximately four (4) hours in Argentina, and approximately fifteen (15) minutes in France. The total flight time from Argentina is estimated to be approximately twelve (12) hours. The total flight time from France is estimated to be approximately eight (8) hours. Transport from the airport to Six Flags is estimated to take approximately forty-five (45) to sixty (60) minutes.

Marine mammal transports of this type and length have been successfully conducted over the past fifteen (15) years, including many transatlantic transports and a transport from South America.

The transport unit will be a model approved by the IATA and the air carrier. The stretcher that will support the animal in the unit will be made to measure in a material designed to avoid any overheating or rubbing during the journey. A quantity of water and ice will be loaded for each stage so as to avoid any abnormal overheating of the animal. As well as using water (mist) sprays, the animal's skin will be coated with moisturizing cream so that the parts that are not submerged do not dry out. The unit will be partially filled with water and foam, of a spongy type, to avoid the effect of gravity on the animal, while avoiding a risk of water spillage in the aircraft.

During the transports the killer whales will be accompanied by experienced professional staff from Six Flags and the originating institutions. As noted in the Application, many staff members have substantial marine mammal transport experience. There will also be two veterinarians with the animals at all times.

It should also be noted, as previously expressed to the agency, that the Application and transport planning was designed to allow for movement of the animals during seasonably cooler times of the year.

6. Attending Veterinarian's Statement.

The Application included considerable detail with respect to the transports including a statement from the attending veterinarian expressly referencing compliance with APHIS' standards at 9 C.F.R. §3.116. Accordingly, this is more appropriately an APHIS matter and that agency has found the Application to be in compliance with the Animal Welfare Act. Nevertheless, without prejudice, a supplemental statement from the attending veterinarian

concerning transport sequence, acclimation times and quarantine procedures is annexed. (Attachment 26.)

Please contact me at (330) 995-2149 if you have any questions.

Thank you for your time and anticipated thoughtful consideration.

Very truly yours,

G. William Hughes
Zoological Director

GWH/pam

Enclosures

Index of Attachments

1. Mundo Marino, "Report Regarding the Stranding, Rehabilitation and Definitive Possession of Kshamenk" (2002).

2. Aerial photographs of Samborombon Bay.

3. Nautical chart of Samborombon Bay.

4. Graphs of cetaceans and pinnipeds treated in the Mundo Marino Foundation Rescue and Rehabilitation Center (1987 – 2002). (Please note commas should be read as decimal points.)

5. Strandings of Killer Whales in Buenos Aires Province.

6. Testimony before notary of fishermen Federico Blehn, dated February 2002. (With English translation)

7. Testimony before notary of fishermen Fabian Marchi, dated February 2002. (With English translation)

8. Testimony before notary of fishermen Osvaldo Puertas, dated February 2002. (With English translation)

9. Map of Samborombon Bay indicating stranding sites.

10. Secretariat of Sustainable Development and Environmental Policy Ichthyologic and Agriculture Directorate Form "C" Marine Mammal Ingress Certificate, dated September 2000. (English translation)

11. Letter from Jose David Mendez, Director, Mundo Marino, to Jose Gil de Muro, Director, Ministry of Agrarian and Fishing Affairs, dated November 24, 1992, and accompanying Veterinarian Reports #1 and #2. (English translation)

12. Memorandum from Veterinary Section, Mundo Marino, to Jose David Mendez, Mundo Marino, for Directorate of Fauna, dated February 12, 1993. (English translation)

13. Letter from Dr. Ricardo Bastida, Director of Marine Mammals Working Group (National University of Mar del Plata), Titular Professor – Marine Sciences Department (National University of Mar del Plata), Main Researcher CONICET, to Jose David Mendez, Mundo Marino, dated December 1, 2001, and accompanying "Technical Report Status Review

of the Orca Named Kshamenk Mundo Marino Aquarium San Clemente Del Tuyo Province of BS. AS. – Argentina". (English translation)

14. Letter from Dr. Louis M. Herman, Director, Kewalo Basin Marine Mammal Laboratory – University of Hawaii Manoa, to Dr. Ricardo Bastida, Mundo Marino, dated April 23, 1993.

15. Letter from Dr. Frank Todd, Executive Director, EcoCepts International, to Dr. Ricardo Bastida, Director, Mundo Marino Foundation, dated March 22, 1993.

16. Letter from Victor Manton, Secretary/Treasurer, European Association for Aquatic Mammals, dated April 19, 1993.

17. Letter from Dr. Lorenzo von Fersen, Scientific Coordinator, Tiergarten Nurnberg, to Dr. Ricardo Bastida, Mundo Marino, dated March 28, 1993.

18. Letter from Dr. Guido Dehnhardt, Department of Ethology, University of Bielefeld to Dr. Ricardo Bastida, Mundo Marino Foundation, dated March 24, 1993.

19. Letter from Dr. Teruo Tobayama, Director, Kamogawa Sea World to Dr. Ricardo Bastida, Mundo Marino, dated March 18, 1993.

20. Letter from Sonny Allen, Director of Marine Mammals, Marine World Africa/USA, to Dr. Ricardo Bastida, Mundo Marino, dated March 16, 1993.

21. Testimony before notary of attending veterinarian Dr. Julio Daniel Loureiro, dated February, 2002 (English Translation)

22. French CITES export permit and certified English translation.

23. Letter from Brian E. Joseph, DVM, Co-Chair American Zoo and Aquarium Association Marine Mammal Taxon Advisory Group, to G. William Hughes, Zoological Director, Six Flags Worlds of Adventure, dated November 26, 2001.

24. Letter from Dr. Lorenzo von Fersen, Tiergarten Nurnberg, to Ricardo Mendez, Mundo Marino, dated November 11, 2001. (English translation)

25. Description of "Killer Whales in Waters of Argentina".

26. Letter from Tobi Pledger, DVM, Staff Veterinarian, Six Flags, to Ann D. Terbush, Chief, Permits, Conservation and Education Division, Office of Protected Resources, NMFS, dated February 5, 2002.

MUNDO MARINO
SAN CLEMENTE DEL TUYU • ARGENTINA

1. REPORT REGARDING THE STRANDING, REHABILITATION AND DEFINITIVE POSSESSION OF KSHAMENK

Abstract

- All north area of Buenos Aires Province is characterized for being a zone of frequent marine mammals strandings. Most of them take place in Samborombón Bay, an extended area of very shallow waters, surrounded by salt marshes, which represent natural tramps for many species of cetaceans. Among them, the killer whales is one of the most frequently found stranded, although up to now it could not be confirmed the presence of resident pods in the area

- Because the Oceanarium Mundo Marino is settled in that area, this institution has become a pioneer organization in Argentina devoted to rehabilitate birds and marine mammals. Depending on it, there is a modern Rehabilitation Center, highly recognized and valuated both for governmental authorities, universities and scientific research centers.

- In the case of Kshamenk stranding, it involved several specimens in an area of very shallow waters in Samborombón Bay, where it was impossible to get by land. We have numerous Testimonies from witnesses of the circumstances related with rescue and rehabilitation of Kshamenk that ensured that there have not been any illegal action or lack of ethical from Mundo Marino or his staff.

- Considering the criteria of our institution, this situation was immediately reported to provincial government authorities, and in this report we detailed all circumstances of the stranding, rescue and the sanitary state of the animal

- The sanitary condition of this specimen, the long rehabilitation period, its strong conditioning with human beings and the lack of resident pods of killer whales in the area, made the governmental authorities discard the possibility of releasing it after his rehabilitation These decisions, were supported by well known scientific authorities in this matter, both from Argentina and foreign countries The possession of this animal was officially supported by the governmental authorities through several inspections performed by Federal and Provincial authorities, until the "C Certificate" was issued. This Certificate gives – according to what it is established in the Law – **the definitive possession** of rehabilitated animals

Report about Kshamenk´s Stranding

The main objective of the following information is to demonstrate that:

- It is constant and usual to find stranded animals, ill or dead, in Samborombón Bay and nearby areas, and the causes for this are natural strandings and not captures.
- We give medical care to all animals that need it, and once recovered are released back in the wild, and stay in the institution only those that are considered non-releasable.
- Kshamenk is one of the many attended stranded animals.

Antecedents

a) Geographical situation:

The zone of strandings is Samborombón Bay in Argentina. It is an extensive Bay about 240 km of coastline, with very shallow waters and minimal slope. During high tide, water floods the coastal areas and marshes through inland waterways, but with low tide, because of the low depth and minimal slope, inter tidal zones can extend kilometers. This inter tidal zones are actually natural "tramps" for cetaceans. During high tide they enter the bay to feed, because fish is abundant there, but when the low tide, they became trapped in the mud. This is a process that perhaps has been happening for several hundred of years. During an excavation in the southern area of this Bay, it was found an average of one skeleton of marine mammal every 20.000 m2

One of the main causes of these strandings is the nature of the sediments of Bahia de Samborombón, formed mainly by non-compacted and extremely plastic (Sic.) materials. This mud has a very high proportion of water and its hardness is very low. One of the characteristics of these sediments is their poor wave reflective nature, which act as wave buffers, which in turn, affect the echolocalization systems of the cetaceans, which do not perform properly under these circumstances

Attachment (2): Aerial view Photographs of Samborombón Bay

Attachment (3): nautical chart of Samborombón Bay, which certify the facts above mentioned.

b) Attention of stranded animals

Because of the numerous marine animals (pinnipeds, cetaceans and birds) that continuously appear in this area, in 1987 it was founded in Mundo Marino the "Marine Fauna Rescue and Rehabilitation Center". In 1992, the President of CONICET (National Council for Research, Science and Technical) inaugurated the Laboratories of this Center, being the first and most important Center in Latin America.

As recognition for the important work of this Center, in 1998 it was declared "Provincial Center" by governmental authorities.

Every year, professionals and University students from Argentina, Brazil and Uruguay come to gain knowledge about marine mammal care. The professionals working in this Center also offers classes for Veterinary Faculties of Mar del Plata University and University of El Salvador.

Because Buenos Aires Province has more than 400 kilometers of coastline, the recovering of sick animals is performed in cooperation with other NGO. Our institution intervenes only in cases of animals that come ashore in nearby areas, but when the animal is far from us, we inform to the nearest NGO.

c) Statistics information regarding the attended animals

Enclosed you will find statistics of the animals attended in the Rehabilitation Center. The information include years 1987 through 2002 (2002 - Information of only one month)

This information shows the wide variety of species attended in the Rescue and Rehabilitation Center. It can also be noted that the specie *Orcinus orca* is one of the eleven species of cetaceans attended.

Attachment (4): Graphs of Cetaceans and pinnipeds attended in the Rescue and Rehabilitation Center (1987-2002)

d) List of *Orcinus orca* stranded in Buenos Aires Province

This list refers to the killer whale individuals that are known to have stranded in the coastal line of Buenos Aires Province. This list doesn't include the animals entered in Mundo Marino.

As you may note, Mundo Marino is not the only institution that has found stranded killer whales, dead or alive, and that strandings not only occurs in Samborombón Bay, but also along the Buenos Aires Province coastline.

No matter which is the involved specie, Mundo Marino **only** intervenes when it considers that the animal needs medical attention, and we mention the following case as an example:

Killer whale stranding, April 7, 1996. Mundo Marino staff went to the stranding place, and notice that the involved animals was an adult killer whale, and there was a second one, which for its size (a calf) could swim freely near his mother. Once determined that both animals could free by themselves with high tide, they didn't intervene. They only keep control in order to ensure that they really could free, which indeed happened.

Attachment (5): "Stranding of Killer Whales in Buenos Aires Province"

e) Stranding of Kshamenk

Kshamenk belonged to a killer whale pod, which entered the Samborombón Bay during high tide perhaps to get food, and they became entrapped in the mud during low tide. We do not know exactly when the stranding happened. It can only be estimated taking in account the first time when one of the animals was sighted. Having this information as a base, we assumed that Kshamenk had been stranded in the mud for two or three days.

Because there are various steps in this situation, considering that it was a multiple stranding, we'll describe the situation from its beginning.

November 17, 1992.

8:00 a.m. – The captain of the fishing boat, Mr. Miguel Marchi, saw an animal on the coast of Salinas Stream, in Samborombón Bay. Because of the very shallow waters, we could not get nearer with his boat, and had to use a small oar boat. This way he confirmed that it was a killer whale, stranded in the mud.

9:00 a.m. – He informed to Mundo Marino by the radio of his boat about the situation.

12:00 a.m. Mundo Marino staff arrives the place, and they verify that it was an adult killer whale. The first diagnostic made "in situ" was that the animal had a serious alteration in the respiratory rate, and bad sunburn because of its large exposition to sun.
The rescue work was specially difficult, because the soil in this zone is muddy (very muddy), and persons got stuck with their boots about 40-50 centimeters in the mud, being almost impossible to work there. After several hours of hard work, they could free the animal from the mud, and put it on an inflatable boat. During this time, his respiratory rate was seriously altered.

9:30 p.m. The killer whale was put in the medical pool. All time the staff was conscious that it was in a very bad physical condition because of the serious symptoms it presented, and tried to act as quick as possible, but the animal dead before anything could be done.

November 18, 1992

5:00 a.m. Early in the morning a fishing boat arrives the harbor, and fisherman informed that late in the afternoon the previous day they had sighted four killer whales stranded in the coast nearby of "Ria de Ajo" mouth.
8:00 a.m. Mundo Marino send his staff by boat to the place, but they had to continue on foot the last two kilometers because there was **not** enough water to move the boat using oars.
Once there, they verified that from the four animals sighted the day before, there was only one. Perhaps the other three animals could free by themselves during high tide.
This animal was a young male which like the killer whale attended the previous day, showed serious sunburn **and was probably under deep stress.**
Several alternatives were analyzed to rescue the animal, but any of them **resulted viable**. The place where the animal was could only be reached on foot, because it was stranded on an extended and flat surface with only 10-20 centimeters of water. The zone with deeper water was about 2 kilometers far from there. The only alternative left was to attend the animal the best they could there, keeping it wet and being confident that it survived until the next high tide brought enough water in order to take it from there. But this didn't happen during the rest of the day.

November 19, 1992.

8:00 a.m. Rescue tasks were started. Although the water level was higher than the previous day, the rescue was very difficult, and took many hours. As time passed, the animal was observed weaker and quieter, it was estimated that more than two days passed since he stranded.

6:00 p.m. Finally the animal was brought to Mundo Marino **on an inflatable boat**, where he is put into the quarantine tank.

As you may note, this was a massive or multiple stranding, and the rescue tasks were very difficult.

Attachment:

MUNDO MARINO
SAN CLEMENTE DEL TUYU • ARGENTINA

(6, 7, 8) Testimony before notary of the fishing boat crew who late November 17 1992 sighted four stranded killer whales, among them Kshamenk.

(9) Scheme/Map of Samborombón Bay, indicating the place where the animals were found.

Report regarding Kshamenk release

The objective of the following information is to demonstrate:

- The oceanariums and steps to follow in case of stranded animals is perfectly regulated by Law in Argentina, and Mundo Marino complied with all of them.
- The governmental authorities are the ones that decide if an animal is released or if it has to stay in a facility
- In the case of Kshamenk, the governmental authorities were continuously checking the situation, and once determined that it was non-releasable, they gave the definitive possession to Mundo Marino.

Report regarding the complying with the Regulations / Laws:

- The Argentinean law N° 351/95 (Resolution) is the one which regulates the oceanariums activities, through a regulation for facilities that houses marine mammals.
- Within this law, the Article N° 19 determines the steps the oceanariums must follow with stranded animals. This article reads as follows:

Article N° 19: All wild marine mammals naturally stranding on the shore, can be brought to an oceanarium only for rehabilitation purposes.
In case an oceanarium rescues a stranded marine mammal, it must:

a- Have adequate facilities, equipment and staff to rehabilitate and for its potential release
b- It must notify about the situation to governmental authorities within seventy two hours (72 hours) after the event, including the following information: animal identification (specie, sex, distinctive marks) and sanitary condition.
c- The stranded animals under rehabilitation in an oceanarium must keep sanitary quarantine.

In case these animals are released back in the wild within sixty days (60 days) after arrival to the oceanarium, this fact must be notified to the authorities within seventy two hours after being released. It can be excepted the presentation of the Incoming / Exit Certificate, referred to Art. 17

If, sixty days (60 days) after arrival to the oceanarium, the animal is still housed in it, the Regulating Authority keeps the right to decide its release or to extend its temporary or definitive permanency in the facilities. In this case, the Regulating Authority will extend an Incoming / Exit Certificate, according to what is established in Article N° 20.

- Regarding Kshamenk, Mundo Marino complied with all requirements from Argentinean Laws, and the Article 19 was totally complied with, as follows:

  A. It had the adequate and necessary infrastructure, equipment and professionals to attend the stranded animal
  B. Mundo Marino informed by phone to the governmental authorities twenty-four hours after the stranded animal was moved to the facilities., and in November, 24 1992 sent a full report of the facts
  C. The animal was under sanitary quarantine. Sixty days after its arrival, he still was under veterinary treatment, latter it was not considered that this juvenile killer whale was apt to be released in the wild. The governmental authorities extended the "C" Certificate, that is the one that gave us the definitive possession of the animal.

Attachment
(10) "C" Certificate of definitive possession
(11) Report sent to authorities November 24, 1992
(12) Veterinarian report February 12, 1993

Report regarding who and how it was decided that Kshamenk was a non releasable animal

- For the Argentinean Law the veterinarians in charge of the oceanarium are the responsible persons regarding all facts related with the health, treatment and behavior of the animal (Art. 27, 28, 29) and that allows/habilitates him to determine the viability for the release of the animal.
  The governmental authorities supervise and control the veterinarians´ work. In case they don't agree with their opinion and considers that the animal must be released, they **"order"** the releasing of the animal. In case they agree, they **"issue"** the "C" Certificate (definitive possession) to the institution.

- When the killer whale Kshamenk entered for medical care, the Argentinean Authorities, apart from checking the evolution of the animal through inspections, medical reports and telephonic communications, helped and cooperated actively in his rehabilitation. The professional staff of government worked in conjunction with the staff of Mundo Marino, giving advice, helping our professionals to interpret the results from analysis and performing consults with specialists.

  When the health of the animal was recovered, our interdisciplinary equip of professionals and the one from governmental authorities agreed that the release of this juvenile specimen of Killer Whale was not viable, because his possibilities of survival in the wild were poor, and it was life threatening.

- In 1993, Mundo Marino asked for the opinion of international and national experts in marine mammals. All of them agreed with our professionals that to release this young killer whale back in the wild could be life threatening, and they were not sure that he could survive. Adjunct you will find the letters we are referring to.

- Latter, the governmental authorities issued the "C Certificate" of definitive possession.
- In December 2001, Mundo Marino asked Dr. Ricardo Bastida, an Argentine scientist most prominent in marine mammal in Argentina, Director of the Marine Mammal working Group, Mar del Plata University, Titular Professor of Marine Sciences Department, Main Researcher of CONICET (National Research Council) Referring to his report, when detailing Alternative 3, he states against Kshamenk releasing.

Attachment
(10) "C Certificate" Definitive Possession

(13) Alternative 3 from Dr. Bastida, and also his complete report, where he also refers to the Agreement signed by Mundo Marino and Six Flags.

(14, 15, 16, 17, 18, 19, 20) Letters from experts consulted in 1993

**Aerial view of the coastline of Samborombon Bay,
showing that there is almost no sloping. With low tide the inter-tidal zone is almost dry,
extending several hundred meters. With high tide the water enters the channels or "rías",
flooding all surface**

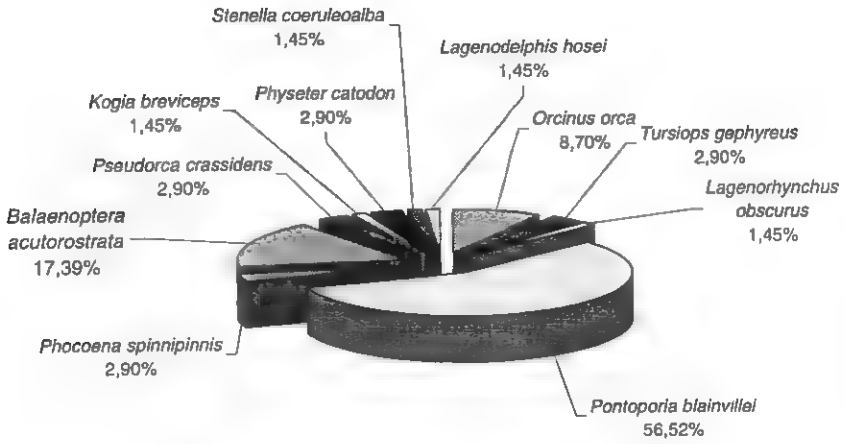




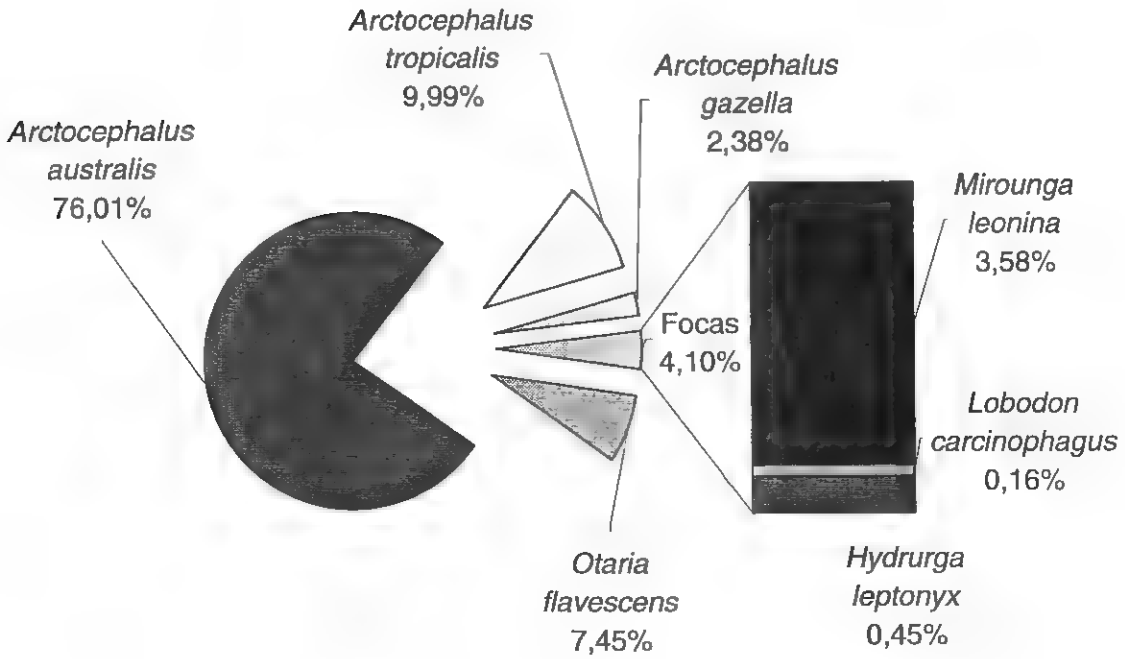
ATTACHMENT (4)

Graphics of Cetaceans and Pinnipeds attended in the Rescue and Rehabilitation Center

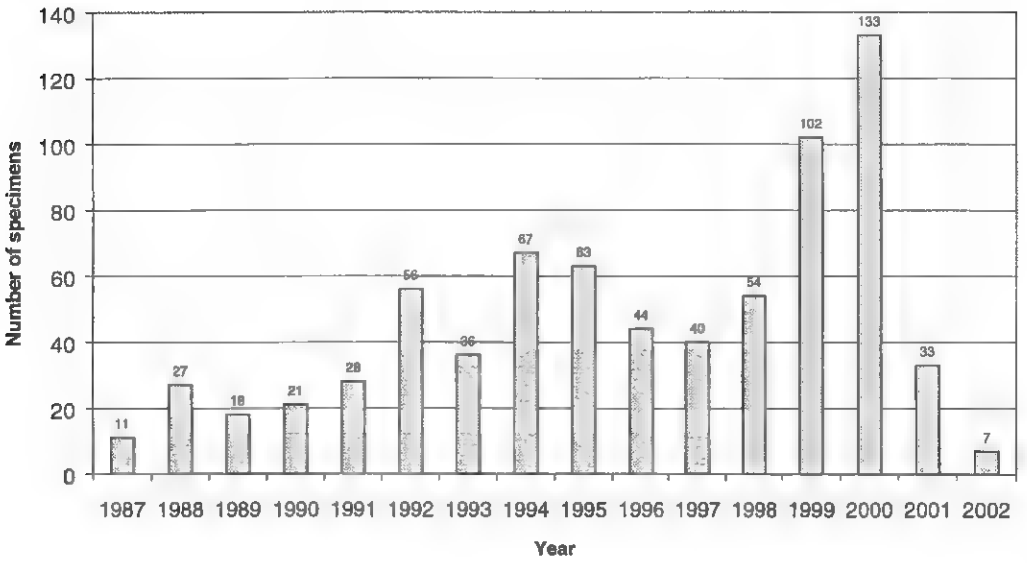
CETACEAS
Species attended (1987 - 2002)



PINNIPEDS
Species attended (1987- 2002)



Marine Mammals attended by the "Marine Fauna Rescue and Rehabilitation Provincial Center"



TESTIMONY BEFORE NOTARY

THIRTEEN - TESTIMONY from Mr. Federico Blehn

In Santa Teresita City, Partido de La Costa, Buenos Aires Province, February 1st. 2002, before me, Nelida Noemí JAUREGUIBERRY de RACKAK, Titular Actuary - Civil Register Office N° 1 La Costa Mr. Federico Blehn, Argentinean, National Identification Document N° 4.560.389, married with Ms. Ana Maria Jestrabek, living in 55 St. N° 467 – San Clemente del Tuyú – Partido de La Costa - He declares that he works as Captain in a fishing boat, "Nueva Realidad" working in the Special fishing Zone, and tells that:

In November 17, 1992 about 2:00 p.m. set off the San Clemente del Tuyú Port, Partido de la Costa, with his fishing boat "Nueva Realidad" accompanied by two sailors, Cesar Fabian Marchi and Osvaldo Oscar Puertas in order to fish "lisas". He also mentions that they sailed northwards; about two miles from the Coast. There, they threw the nets three times, and when they were in a place situated between the mouth of "Ria de Ajo" and "Arroyo Ancho", they sighted, near the coast, two big objects, they also noted movement in the water and sea birds flying over the place. It was about 7:00 p.m. He decided to get nearer that place with his fishing boat to verify what it was, but they could not get there because there was not enough water to sail, so they anchored in deeper waters. That´s why Mr. Fabian marchi and Osvaldo Oscar Puertas with a smaller boat with oars tried to get there to see what it was: from where he was he observed that the two other persons could reach the place, but from where he was he could not identify what the objects were. It was getting darker when Mr. Marchi and Mr. Puertas returned to the fishing boat, telling him that there were four stranded killer whales, stranded in a muddy and sandy zone, that they were alive, three of them were big and one small. After this, we weighed anchors and sailed back to San Clemente del Tuyu Port, but because the low tide they we could not enter the port, and had to wait in the mouth of the Ría San Clemente until about 3:00 a.m. waiting for the high tide, we arrived port about 5:00 a.m., where I immediately informed to the vigilance person in Mundo Marino, Mr.. Suhr about the animals that were in the previous described zone. Mr. Federico Blehn in this point manifiests that the present is performed as a **TESTIMONY**, and that doesn't want to add any more. I read him this report and ratifies that it is integrally correct, and signs its. I testify.

ACTUACION NOTARIAL

GAA05255661

PROTOCOLO

TRECE.- ACTA DE DECLARACION JURADA.- don FEDERICO BLEHN.-En la ciudad de Santa Teresita, Partido de La Costa de la Provincia de Buenos Aires, a un dìa del mes de febrero de dos mil dos ante mi, Nelida Noemi JAUREGUIBERRY de RACAK, Escribana Titular del Registro Uno de La Costa, comparece: el señor **Federico BLEHN**, argentino, con Documento Nacional de Identidad número 4.560.389, casado en primeras nupcias con Ana María- Jestrabek, domiciliado en calle 55 número 467 de San Clemente del Tuyú, Partido de La Costa, capaz, de mi conocimiento, doy fe.- Manifiesta que ejerce funciones de Patron de Zona Especial de la Embarcación Nueva Realidad.- Y dice: Que el día 17 de noviembre de 1992 alrededor de las catorce horas salió del Puerto de SAN CLEMENTE DEL TUYU, Partido de La Costa, a bordo de la Lancha Nueva Realidad en compañía de los marineros César Fabian Marchi y Osvaldo Oscar Puertas con el objeto de pescar lisas.-Agrega, que navegaron rumbo al Norte; manteniéndose a una distancia aproximada de dos millas de la Costa.-Allí realizaron tres lances de red y encontrándose en un sitio ubicado entre la desembocadura de la Ría de Ajó y el Arroyo Ancho, observaron proximos a la costa unos objetos grandes, había movimientos de agua y gaviotas sobrevolando el lugar, serían alrededor de las diecinueve horas.-Decidió acercarse con la lancha a ese lugar para observar de que se trataba, pero no lo pudieron lograr pues no había suficiente profundidad para navegar, procediendo a anclar

CERTIFICO: que la atestación notarial correspondiente a esta fotocopia se formaliza en el folio de actuación notarial número BAA02613010
Santa Teresita 1º Febrero 2002.

GAA05255661

los señores Fabian Marchi y Osvaldo Oscar Puertas en un bote a remo intentaran llegar hasta ese sitio para ver que eran; observando él desde lejos que lograron acceder al lugar, destacando que desde donde se encontraba no logró identificar de que se trataba.-Estaba ya anocheciendo cuando los señores Marchi y Puerta volvieron al barco, contando que habian cuatro orcas varadas en una zona de arena barrosa, que estaban vivas, tres de ellas de tamaño grande y una chica.- A continuación levamos ancla dirigiéndonos al Puerto de San Clemente del Tuyú, pero por la marea muy baja faltaba agua y no pudimos entrar, y tuvimos que esperar en la desembocadura de la Ria San Clemente del Tuyu, hasta las 3 horas aproximadamente de la madrugada del día 18 de noviembre de 1992 que subiera la marea; llegando al mencionado Puerto más o menos a las 5 horas de la mañana, donde procedí a comunicar de inmediato al sereno de Mundo Marino Señor Suhr sobre los animales que se encontraban en la zona identificada precedentemente.-En este estado al señor Federico Blehn manifiesta, que a sus efectos, que realiza la presente con carácter de **DECLARACION JURADA**, no solicitando agregar mas datos.- Leo al compareciente quien la ratifica en su contenido integrò y así la otorga y firma, ante mi, doy fe.- Sobre raspado Maria Vau.

ACTUACION NOTARIAL

BAA02613010

Fº

CONCUERDA con su matriz que pasó al folio 21 del Protocolo del corriente año del Registro UNO de La Costa, a mi cargo, doy fe.- EXPIDO el presente PRIMER TESTIMONIO para el señor Federico Blehn en fotocopia del folio de Actuación Protocolar GAA05255661 y el presente folio de Actuación Notarial número BAA02613010 que sello y firmo en el lugar y fecha de su otorgamiento.-

BAA02613010

CERTIFICO: que la [illegible] correspondiente a esta fotocopia se formaliza en el rollo de actuación notarial número EAA01204939

Sabadell a 1º Febrero de 2022

[illegible]
NOTARIA NOEMI [illegible] DE RAGUAN
[illegible]

EAA01204939

Fº

CERTIFICO que el documento adjunto que consta de dos (2) - - - - - - - -- fojas que llevan mi sello y firma, es copia fiel de su original, que tengo a la vista doy fe.- Registro número UNO del Distrito de LA COSTA. - - - - - - - - - - - - - - - - - - Lugar y fecha: Santa Teresita, primero de febrero de dos mil dos.-

TESTIMONY BEFORE NOTARY

FOURTEEN - TESTIMONY from Mr. Fabian Cesar Marchi

In Santa Teresita City, Partido de La Costa, Buenos Aires Province, February 1st. 2002, before me, Nelida Noemí JAUREGUIBERRY de RACKAK, Titular Actuary - Civil Register Office N° 1 La Costa Mr. Cesar Fabian Marchi , National Identification Document N° 16.085.768, single, living in 10 and 57 St. - San Clemente del Tuyú – Partido de La Costa - He manifests that his unique intention is to testify the following events.- And he adds: that he works as sailor in the fishing boat "Nueva Realidad"; and in November 17, he was in the ship with the captain Mr. Federico Blehn and the other sailor Osvaldo Puertas in order to fish "lisas". After sailing for several hours, when we passed near the "Ria de Ajo", we saw at distance some dark bulks, big in size, but we could not distinguish what they were because we were very far from them. He adds, that in that place every time that there is a very low tide, it is formed something like a canal, and in front of it is formed a sand bank. That moment, because the low level of water, we went with Mr. Puertas in a boat with oars and we could reach the place. We could verify that there were four killer whales, one of which was smaller than the other three. We looked at them without getting very near, but because some of them were very quiet we got nearer by foot and after that, with a draining jar we had in the boat we poured water on them, because they were very dry, specially one of the biggest; the smaller stayed away a few meters.- We observed that the killer whales every other time moved and emitted a whistling sound.- Then we came back to the fishing boat "Nueva Realidad" and told about what we had seen and happened this to Mr. Federico Blehn, who decided to sail back to San Clemente del Tuyu Port to inform about this.- We reached the mouth of the "Ria de Ajo" at night, but we had to wait until the water level was higher in order to enter the Port. It was not until early November 18 that we could do so, and Federico informed about the killer whales in Mundo Marino.- Having no more to declarate, I consider this act finished.

I read him this report and ratifies that it is integrally correct, and signs its before me. I testify.

ACTUACION NOTARIAL

GAA05255662

PROTOCOLO

CATORCE.- ACTA DE DECLARACION JURADA.- don /Cesar/ **Fabian MARCHI.**-En la ciudad de Santa Teresita, Partido de La Costa de la Provincia de Buenos Aires, a un dìa del mes de febrero de dos mil dos ante mi, Nelida Noemi JAUREGUIBERRY de RACAK, Escribana Titular del Registro Uno de La Costa, comparece el señor **César Fabian MARCHI**, argentino, con Documento Nacional de Identidad número 16.085.768, soltero , domiciliado en calle 10 y 57 de San Clemente del Tuyú, de este Partido, capaz, de mi conocimiento, doy fe.- Manifiesta que concurre al solo efecto de realizar una manifestacion con carácter de DECLARACION JURADA de los hechos que referirá.-Y agrega: Que cumple funciones de Marinero en la Embarcacion Nueva Realidad; y que el día 17 de noviembre de 1992 se encontraba embarcardo junto con el patron Federico Blehn y el marinero Osvaldo Puertas con el objeto de pescar lisas.-Después de pescar varias horas, cuando pasamos cerca de la Ría de Ajó, observamos desde lejos, que en un sector cerca de la costa habia unos bultos oscuros, de tamaño grande, no logrando distinguir de que se trataba pues nos encontrabamos lejos de ellos.-Agrega, que en ese lugar cada vez que la marea baja mucho, se forma una especie de canaleta, quedando como un banco de arena adelante.- En estos momentos, como había poco agua, fuimos con el señor Puertas en un bote a remo y asi logramos llegar a ese lugar.-Comprobamos que habia cuatro orcas, una de las cuales era mas chica que las tres restantes.-Las

CERTIFICO: que la atestación notarial correspondiente a esta fotocopia se formaliza en el folio de actuación notarial número BAA0261 3011
Santa Teresita 1º Febrero 2002

GAA05255662

ellas que estaban muy quietas nos acercarmos caminando y despues, con un tarro de achique que había en el bote, les echamos agua encima, porque estaban muy secas, sobre todo a una de las grandes; permaneciendo la mas pequeña alejada unos metros.-Observamos que las orcas cada tanto se movían y emitian silbidos.-A continuacion regresamos a la Embarcación Nueva Realidad y pusimos en conocimiento del señor Blehn todo lo sucedido y observado, quien decidió volver al Puerto de San Clemente del Tuyu para avisar de todo ello.-Llegamos de noche a la desembocadura de la Ría, pero tuvimos que esperar que hubiere un poco mas de profundidad para poder entrar a Puerto. Recien pudimos entrar, de madrugada del 18 de noviembre de 1992 y Federico fue a avisar de las orcas a Mundo Marino.-No habiendo mas a consignar doy por terminado el acto.-LEO al compareciente quien la ratifica en su contenido íntegro y así la otorga y firma, ante mi, doy fe.- Enmendado: Cesar Sau.

Fabián C Roselli

Ante mi

ACTUACION NOTARIAL

BAA02613011

CONCUERDA con su matriz que pasó al folio 22 del Protocolo del corriente año del Registro UNO de La Costa, a mi cargo, doy fe.- EXPIDO el presente PRIMER TESTIMONIO para el señor César Fabian MARCHI en fotocopia del folio de Actuación Protocolar GAA05255662 y el presente folio de Actuación Notarial número BAA02613011 que sello y firmo en el lugar y fecha de su otorgamiento.-

BAA02613011

CERTIFICO que la atestación notarial correspondiente a esta fotocopia se formaliza en el folio de actuación notarial número EAA0120494

Santa Teresita 1º Febrero de 2003

NELIDA NOEMI JAUREGUIBERRY de RACAK
NOTARIA

EAA01204941

Fº

CERTIFICO que el documento adjunto que consta de dos (2) - - - - - - - fojas que llevan mi sello y firma, es copia fiel de su original, que tengo a la vista doy fe.- Registro número UNO del Distrito de La Costa.-------- ---------- Lugar y fecha: Santa Teresita, Primero de febrero de dos mil dos.-

TESTIMONY BEFORE NOTARY

FIFTEEN - TESTIMONY from Mr. Osvaldo Oscar PUERTAS

In Santa Teresita City, Partido de La Costa, Buenos Aires Province, February 1st. 2002, before me, Nelida Noemí JAUREGUIBERRY de RACKAK, Titular Actuary - Civil Register Office N° 1 La Costa Mr. Osvaldo Fabian Puertas , National Identification Document N° 14.520.916, single, living in 55 St. N° 151 – San Clemente del Tuyú – Partido de La Costa - He manifests that his unique intention is to testify the events that following will refer.- Adding: that he works as sailor in the fishing boat "Nueva Realidad"; In November 17 1992 after midday they went on board with the captain Federico Blehn and the sailor Fabian Marchi in order to fish.- He declares that some hours had passed and they were fishing and they reached the "Ria de Ajo", and when they were sailing northwards before reaching the "Arroyo Ancho" saw that there were several bulks near the coast.- He adds that in these area they had found big school fish of "corvina negra" and "lisas" (local species of fish), because they became trapped in the mud. Mr. Blehn stayed with the fishing boat anchored in deeper waters because the low tide, and with Mr. Cesar Fabian Marchi they went by oar boat to get nearer the place. They oared almost 2.500 meters until they reached the place where the bulks were, verifying that there were four killer whales, three were very big, and one was small, which was very near the coast.- We get out the boat because the area was very plain, no more than 20-30 centimeters of water deep, getting nearer the animals, we walked around them, we verified that they were very quiet and without movement, but the other sometimes moved and lifted the tail, splashing water.- We stayed there for a long time pouring water on them to wet them. Because we couldn't do anything because they were very big and we were far from deeper water, we decided to return to the fishing boat to inform.- We returned to port and because there was a very low tide, it was not until early the next morning that we could enter the Port of San Clemente del Tuyú and we informed the vigilance person of Mundo Marino about what we had seen. – He had no more to add, I consider this act finished. I read him this report and ratifies that it is integrally correct, and signs its before me. I testify.

ACTUACION NOTARIAL

GAA05255663

PROTOCOLO

QUINCE.- ACTA DE DECLARACION JURADA.- don Osvaldo Oscar PUERTAS.-En la ciudad de Santa Teresita, Partido de La Costa de la Provincia de Buenos Aires, a un dìa del mes de febrero de dos mil dos ante mi, Nelida Noemi JAUREGUIBERRY de RACAK, Escribana Titular del Registro Uno de La Costa, comparece el señor **Osvaldo Oscar PUERTAS**, argentino, con Documento Nacional de Identidad número 14.520.916, soltero, domiciliado en calle 55 número 151 de San Clemente del Tuyú, de este Partido, capaz, de mi conocimiento, doy fe.- Manifiesta que concurre a este acto, al solo efecto de efectuar una manifestacion con carácter de DECLARACION JURADA de los hechos que referirá.- Agregando: Que cumple funciones de Marinero en la Embarcacion Nueva Realidad; en la cual el dia 17 de noviembre de 1992 después del mediiodía se embarcaron junto con el patron Federico Blehn y el marinero Fabian Marchi con el objeto de pescar.-Declara que hacía varias horas que se encontraban pescando y llegaron hasta la Ría de Ajó, y cuando ibamos rumbo hacia el Norte y antes de llegar al Arroyo Ancho, vieron que había varios bultos de tamanño grande cerca de la costa.-Agrega, que en ese lugar muchas veces habíamos encontrado cardúmenes de corvinas negras y de lisas, pués quedan atrapados en medio de lo seco.- El señor Blehn se quedó con la lancha anclada mas adentro porque había mucha bajante, y junto con el señor César Fabian Marchi fuimos en un bote a remo tratando de aproximarnos a ese sitio.-Remamos casi 2500 metros

ERTIFICO: que la atestación notarial corres-
ondiente a esta fotocopia se formaliza en el folio
y actuación notarial número BAA 026130 12
Santa Teresita 1º Febrero 2008

GAA05255663

bando que eran cuatro orcas, de las cuales tres eran grandes y una era chica, la cual estaba mas cerca de la costa.-Nos bajamos del bote porque el lugar era muy playo, no habiendo mas de 20 a 30 centimetros de agua de profundidad, procediendo a acercarnos a los animales y caminamos alrededor de ellas, comprobamos que dos permanecian muy quietas y sin movimiento alguno, pero la otra de vez en cuando se movía y levantaba la cola, tirando agua.-Permanecimos en el lugar por largo rato y les tiramos un poco de agua encima para mojarlas.-Como no podíamos hacer nada más porque eran muy grandes y estábamos muy lejos de la parte en que había profundidad, decidimos volver a la embarcación para avisar.- Emprendimos el regreso y como esa noche había marea muy baja, recien a la madrugada entramos al Puerto de San Clemente del Tuyu y se le avisó al sereno de Mundo Marino lo que habíamos visto.-No teniendo mas para agregar el requirente, doy por terminado el acto.-LEO al compareciente quien la ratifica en su contenido integro y así la otorga y firma, ante mi, doy fe.-

Arnoldo Arcos Fuentes

Ante mi

ACTUACION NOTARIAL

BAA02613012

Fº

CONCUERDA con su matriz que pasó al folio 23 del Protocolo del corriente año del Registro UNO de La Costa, a mi cargo, doy fe.- EXPIDO el presente PRIMER TESTIMONIO para el señor Osvaldo Oscar PUERTAS en fotocopia del folio de Actuación Protocolar GAA05255663 y el presente folio de Actuación Notarial número BAA02613012 que sello y firmo en el lugar y fecha de su otorgamiento.-

NELIDA NOEMI IRIGOYEN de RACAK
NOTARIA

BAA02613012

CERTIFICO: que la atestación notarial correspondiente a esta fotocopia se formaliza en el folio de actuación notarial número EAA01204940

Santa Teresita 1º Febrero de 2002

NELIDA NOEMI JAUREGUIBERRY de RACAK
NOTARIA

EAA01204940 Fº

CERTIFICO que el documento adjunto que consta de dos (2) - - - - - - -- fojas que llevan mi sello y firma, es copia fiel de su original, que tengo a la vista doy fe.- Registro número UNO del Distrito de LA COSTA.- - - - - - - - - - - - - - - - - - Lugar y fecha: Santa Teresita, primero de febrero de dos mil dos.-

PROFUNDIDADES EN METROS

57° 27' 5' 57° 45' 56° 35'

35° 23'

30'

45'

36°

15'

26'

EQUIVALENCIA ENTRE METROS Y PIES

1 m = 3,28083333 pies

METROS	PIES	METROS	PIES
0,10	0,33	8	26,25
0,20	0,66	9	29,53
0,30	0,98	10	32,81
0,40	1,31	15	49,21
0,50	1,64	20	65,62
0,60	1,97	25	82,02
0,70	2,30	30	98,42
0,80	2,62	35	114,82
0,90	2,95	40	131,23
1	3,28	45	147,63
2	6,56	50	164,04
3	9,84	60	196,85
4	13,12	70	229,66
5	16,40	80	262,47
6	19,68	90	295,27
7	22,97	100	328,06

DATOS DE MAREA

Lugar	Ε de P (medio)	Alturas de la mares (valores medios)	Alt. nivel medio
Punta PIEDRAS *	XI h 05 m	S { Pm. 1.35 m Bm. 0.56 " C { Pm. 1.26 m Bm. 0.65 "	0.85 m
SAN CLEMENTE ** (Muelle)	VIII h 54 m	S { Pm. 1.33 " Bm. 0.49 " C { Pm. 1.21 " Bm. 0.61 "	0.91 "

Referidas al Plano Reducción: *"Límite inferior de la media de todas las bajamares"
**"Límite inferior de la media de las bajamares de sicigias"

ADVERTENCIA

En algunos casos la simbología y características del boyado podrían no ajustarse a lo indicado en la cartografía.

ADVERTENCIA

Las posiciones obtenidas de navegación satelitaria referidas al Sistema Geodésico Mundial (W.G.S.) deben trasladarse 1"3 al Sur y 2"5 al Este para concordar con esta carta.

Verónica
Estn. R. Pinero
Arroyo San Felipe
F.C. Gral. Roca (La Monte Velaz)
Monte Velaz
Estn. Pta. Piedras
Fo. Pta. Piedras
8 Des. c/9,45 m 5,1 Ms SG
BANCO PIEDRAS
Poderoso
Carta H-117
Zona de Alijo "B"
Pipinas
Río Samborombón
Río Salado
Hal. Río Salado
B.Des. c/8s 10,5 m 6,8 Ms
Elizabeth
PA
V.Des.(3) c/10s
Canal 15
Canal La Porteña
Canal de Contención
Canal Santa Maura
Canal 10
Canal 9
Canal 4
Canal 1
Malvinas II
Primero de Vigo
PA
Decl. 06° 18' 00" W 1998
Crece 0.7' 18" anualmente
BAHÍA SAMBOROMBÓN
BANCO DEL CABO
Salvador
BANCO DEL TUYÚ
Contacto
LÍMITE EXTERIOR RÍO DE LA PLATA
BANCO SAN AGUSTÍN
Kontiki II
Pta. Rasa
Bal. Toledo
Bal. Kufuleción
B.Des c/3,5 s 17 m 6,1 Ms
Fo San Antonio
Bahía San Clemente
Don Pablo Salvini
Bal. Ajo
B.Des c/3s 8,5 m 4,3 Ms
Bal. Dos Hermanos
B.Des c/5s 1,8 Ms
Cabo San Antonio
Frontón del Cabo
Arroyo San Clemente
Fo San Antonio
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San Clemente del Tuyú
Arroyo Tuyú
General Lavalle
El Tala
Ana y Francisca
Zona de Alijo "C"

REPÚBLICA ARGENTINA

PROVINCIA DE BUENOS AIRES

BAHÍA SAMBOROMBÓN

Comisión Levantamiento Integral del Area del Rio de la Plata (1964) Decreto Ley 8984/63
Compilación de levantamientos efectuados por el Servicio de Hidrografía Naval, hasta 1968
Restitución aerofotogramétrica con apoyo del Servicio de Hidrografía Naval - 1966

PROYECCIÓN MERCATOR

Escala en latitud media 1: 150.000

PROFUNDIDADES EN METROS

Referidas al límite inferior de la media de todas las bajamares

Elevaciones en metros sobre el nivel medio

A. *arena* - Ar. *arcilla* - C. *conchilla* - I. *fna* - L. *limo*

Alcance de las señales luminosas: NOMINAL

Longitud 57° Oeste de Greenwich

1a. Edición 1969 *Última corrección 1998-126 - 9000 47 - 60*

Publicado por el Servicio de Hidrografía Naval de la Armada Argentina - Buenos Aires - VII - 1969

Impreso en el Departamento Artes Gráficas

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Reimpresión Mayo 1998

Angélica A. Breciani - Cartógrafo

PROFUNDIDADES EN METROS

H-115

CUIDE SU MAR NO LO CONTAMINE



1- Place where Kshamenk was found

2- Place where the killer whale was found on day 17

3- Distance between Place(1) and Place (2) six kilometers

SECRETARIAT OF SUSTAINABLE DEVELOPMENT AND ENVIRONMENTAL POLICY ICHTHYOLOGIC AND AQUACULTURE DIRECTORATE	FORM **C** MARINE MAMMALS INGRESS/EGRESS CERTIFICATE
SUBMISSION DATE 03/03/00	AUTHORIZATION NUMBER:
TRADE NAME OR NAME OF HOLDER: ***MUNDO MARINO S.A.***	

EXISTING MARINE MAMMALS UPON AUTHORIZATION: (SEE ATTACHED LIST)

QUANTITY	INGRESS DATE	SCIENTIFIC NAME	SEX	IDENTIFYING MARKS	ORIGIN (2)
11		*Arctocephalus australis*			
2		*Mirounga leonina*			
2		*Orcinus orca*			
9		*Otaria flavescens*			
7		*Tursiops gephyreus*			

MARINE MAMMALS ENTERED AFTER THE AUTHORIZATION: (SEE ATTACHED LIST)

QUANTITY	INGRESS DATE	SCIENTIFIC NAME	SEX	IDENTIFYING MARKS	ORIGIN (2)
1	11/25/99	*Arctocephalus australis*	F	None stated	Birth
1	01/25/97	*Otaria flavescens*	F	Picture issued without description of IDENTIFYING marks	Import
2		*Tursiops gephyreus*			Birth

ANIMALS TO AUTHORIZE FOR ~~INGRESS~~ / EGRESS (1): (SEE ATTACHED LIST)

QUANTITY	~~INGRESS~~/EGRESS DATE	SCIENTIFIC NAME	SEX	IDENTIFYING MARKS	ORIGIN (2)
1	02/26/98	*Otaria flavescens* "Pola"	F	None stated	Death
2		*Tursiops gephyreus*			Death
1	02/04/00	*Orcinus orca* "Belén"	F	Scars: On right pectoral fin: cut on the rear edge, with prominence of a small appendix	Death
1	01/16/00	*Otaria flavescens* "Tabaré"	M		Death
1	02/27/00	*Arctocephalus australis* "Tomy"	M		Death

TO BE COMPLETED BY THE CORRESPONDING AUTHORITY

03/03/00
Date

Illegible Signature
Authority signature and stamp

(1) Cross out whatever does not correspond
(2) Specify:
- In the event of an ingress of Marine Mammals, if it is an:
  Import / Transfer / Birth / Capture / Beaching
- In the event of an egress of Marine Mammals, if it is an:
  Export / Transfer / Death / Liberation

INSTRUCTIONS:

- **If an Import, Export, Transfer, Capture or Liberation**, an Application for Ingress/Egress should have been submitted previously before that Corresponding Authority
- **If a Birth**, a Veterinary Certificate should be included, along with the Data Card of the animal, including: parents data, date of birth, weight, length and picture.

Prepared by Multinational Translating Service, NY
Translated from a faxed copy on October 21, 2001
By: Mr. Eduardo Zaldibar, Translator ID# 1066
Certification Attached

- **If a death**, a Necropsy report should be included, along with the Data Card of the animal.
- **If a Beaching**, the Data Card of the animal should be included.
- **If a Capture/Liberation**, a report of the operations should be included.

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Translated from a faxed copy on October 21, 2001
By. Mr. Eduardo Zaldibar, Translator ID# 1066
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INGRESS OF ANIMALS

EXISTING MARINE MAMMALS UPON AUTHORIZATION

QUANTITY	INGRESS DATE	SCIENTIFIC NAME	SEX	IDENTIFYING MARKS	ORIGIN
1	01/13/79	*Arctocepahlus australis* "Tomy"	M	Mark: Edge of pelvic fin	Beaching at beaches south of Punta Rasa
1	02/22/82	*Arctocepahlus australis* "Gina"	F	Scars: Right pectoral fin	Beaching at beaches south of Punta Rasa
1	12/19/82	*Arctocepahlus australis* "Luján"	M	Scars: Nick on rear edge of right pectoral fin	Beaching at beaches south of Punta Rasa
1	11/21/83	*Arctocepahlus australis* "Yogui"	F	Picture delivered w/o marks description	Beaching at beaches south of Punta Rasa
1	02/24/84	*Arctocepahlus australis* "Tina"	F	Marks: Right pectoral fin	Beaching at beaches south of Punta Rasa
1	12/06/91	*Arctocepahlus australis* "Poroto"	M	Scars: Marks on rear edge of left pectoral fin	Birth
1	12/24/87	*Arctocepahlus australis* "Noel"	M	Scars: Nick on rear edge of left pectoral fin	Birth
1	12/14/88	*Arctocepahlus australis* "Salvatore"	M	Marks: upper right fang missing	Beaching at beaches south of Punta Rasa
1	03/01/90	*Arctocepahlus australis* "Loly"	M	Picture delivered w/o marks description	Beaching at Santa Clara del Mar
1	12/05/90	*Arctocepahlus australis* "Marta"	F	Picture delivered w/o marks description	Beaching at beaches south of Punta Rasa
1	12/31/95	*Arctocepahlus australis* "Tyson"	M	Spots: Submaxilar area light brown colored. White moustaches	Beaching at beaches San Clemente
1	02/14/89	*Mirounga leonina* "Laly"	F	Scars: Scar on upper lip	Beaching at beaches Reta beach resort
1	05/12/89	*Mirounga leonina* "Bernardo"	M	Scars: Nick on right pelvic fin	Beaching at beaches south of Punta Rasa
1	06/01/88	*Orcinus orca* "Belén"	F	Scars: On right pectoral fin: cut on rear edge, with prominence of small appendix	Beaching at beaches south of Punta Rasa
1	11/19/92	*Orcinus orca* "Kshamenk"	M	Scars: Caudal fin displays two nicks on rear edge of right lobe.	Beaching at Bahía San Borombón swampy crab grounds
1	09/10/82	*Otaria flavescens* "Tabare"	M	Spots: Rear edge of left pectoral fin	Incidental capture at Mar del Plata Artificial Harbor Naval Station
1	08/02/84	*Otaria flavescens* "Carolina"	F	Spots: on right pectoral fin	Beaching at beaches south of Punta Rasa
1	08/02/84	*Otaria flavescens* "Lila"	F	Marks: Wart on left lateral nostril	Beaching at beaches south of Punta Rasa
1	08/02/84	*Otaria flavescens* "Malvina"	F	Marks: Wart on upper eyelid, on right eye	Beaching at beaches south of Punta Rasa
1	03/02/85	*Otaria flavescens* "Luz"	F	Marks: Left eye	Birth
1	02/02/89	*Otaria flavescens* "Pola"	F	None stated	Birth
1	06/18/91	*Otaria flavescens* "Susan"	F	Spots: Brown moustache and rounded snout	Import from Uruguay
1	06/18/91	*Otaria flavescens* "Tania"	F	Marks: Flattened snout	Import from Uruguay
1	02/16/92	*Otaria flavescens* "Gala"	F	Marks: Cut on rear edge of left pectoral fin	Birth
1	07/20/82	*Tursiops gephyreus* "Vilma"	F	Non stated	Incidental capture during corvine trammeling at Bahía Sanboronbón
1	11/23/82	*Tursiops gephyreus* "Clementina"	F	Scars: Irregular rear edge dorsal fin w/several nicks	Birth
1	11/29/82	*Tursiops gephyreus* "Bocón"	F	None stated	Incidental capture during corvine trammeling at Bahía Sanboronbón

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By: Mr. Eduardo Zaldibar, Translator ID# 1066
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QUANTITY	INGRESS DATE	SCIENTIFIC NAME	SEX	IDENTIFYING MARKS	ORIGIN
1	12/19/90	*Tursiops gephyreus* "Goliath"	M	Scars: Nick on rear edge of dorsal fin	Beaching at beaches south of Punta Rasa
1	03/15/91	*Tursiops gephyreus* "Floppy"	F	Scars: Two nicks on rear edge of caudal fin right lobe	Beaching at beaches south of Punta Rasa
1	03/16/91	*Tursiops gephyreus* "Estrella"	F	Scars: Nick on rear edge of rear dorsal fin	Beaching at beaches south of Punta Rasa
1	12/27/95	*Tursiops gephyreus* "Quimay"	M	Scars: Nicks on rear edge of caudal fin right lobe	Beaching at beaches south of Punta Rasa

MARINE MAMMALS ENTERED AFTER AUTHORIZATION

QUANTITY	INGRESS DATE	SCIENTIFIC NAME	SEX	IDENTIFYING MARKS	ORIGIN
1	01/25/97	*Otaria flavescens* "Barumi"	F	Picture delivered w/o marks description	Import
1	10/05/98	*Tursiops gephyreus* "Ciembo"	M	Picture delivered w/o marks description (Does not have yet)	Birth
1	09/11/99	*Tursiops gephyreus* "Cachorro de Estrella"	M	Picture delivered w/o marks description (does not have yet)	Birth
1	11/23/99	*Arctocephalus australis* "Yoko"	F	None stated	Birth

EGRESS OF ANIMALS

QUANTITY	INGRESS DATE	SCIENTIFIC NAME	SEX	IDENTIFYING MARKS	ORIGIN
1	02/26/98	*Otaria flavescens* "Pola"	F	None stated	Death
1	01/21/98	*Tursiops gephyreus* "Vilma"	F	Non stated	Death
1	05/13/98	*Tursiops gephyreus* "Bocón"	F	None stated	Death
1	01/16/00	*Otaria flavescens* "Tabare"	M	Rear edge of left pectoral fin	Death
1	02/04/00	*Orcinus orca* "Belén"	F	Scars on right pectoral fin: cut on rear edge, with prominence of small appendix	Death
1	02/27/00	*Arctocephalus australis* "Tomy"	M	Marks on edge of right pelvic fin	Death

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Translated from a faxed copy on October 21, 2001
By: Mr. Eduardo Zaldibar, Translator ID# 1066
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928 Connetquot Avenue
Central Islip, NY 11722

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CERTIFICATION

This is to certify that the information in the attached translated document, Form C Marine Mammals Ingress/Egress Certificate, dated March 3, 2000, concerning Mundo Marino S.A. is true and correct. The document was translated from Spanish to English on October 21, 2001 by Mr. Eduardo Zaldibar, Translator ID# 1066. Mr. Zaldibar is fluent in Spanish and English, and is a registered translator and interpreter with Multinational Translating Service.

Signed: _____
Karen A. Miller, Partner
Multinational Translating Service, NY

County of Suffolk)
SS:
State of New York)

Sworn to before me this 2nd day of February, 2002

Notary Public: _____

LEONARD P. CORAZZA
Notary Public, State of New York
No. 24-4835856
Qualified in Kings County
Commission Expires 2-28 2002

My Commission Expires:

Phone: 631-581-8956 - Toll-free: 877-442-1743 - Fax: 631-224-9435
E-mail: mtsvc@optonline.net - URL: www.mtsvc.qpg.com

Attachment (11)

San Clemente del Tuyú, November 24, 1992.

Mr. José Gil de Muro - Director
Ministry of Fishing and Agriculture Affairs
Mitre 2853
7600 – MAR DEL PLATA

Dear Sir,

It´s a pleasure to contact you in order to inform about a cetacean stranding happened last week.

Regarding this, I'll inform you the situation: In November 17, 8:00 a.m. Mr. Miguel Marchi, a fisherman, was fishing "lisas" in Samborombón Bay, and saw an animal on the coastline of "Las Salinas" stream. Because the very low water depth, he could not get the place by ship, so he used a boat. He could verify that it was an adult killer whale stranded in the mud. At about 9:00 a.m., he informed by radio to Mundo Marino, and rescue tasks started.

When Mundo Marino staff reached the place, they verified that it was an adult killer whale, and the first diagnostic was a severe alteration in the respiratory rate, and also serious sunburn. The rescue tasks were very especially difficult, because the soil of the area is muddy and persons got stuck about 40-50 cm in the mud, making almost impossible to work. However, fifteen persons worked tireless during several hours to get the animal out of the mud and to bring it onto a pneumatic boat that moved it to the oceanarium. He was controlled during all trip to the oceanarium because they were very concerned for his respiratory rate.

At 9:30 p.m. they arrived Mundo Marino, where everything was ready to put the animal in the tank. But because of the great size of the animal, special machines had to used.

Unfortunately, the animal dead few minutes later after being introduced in the water. The staff was all time conscious of its bad physical condition because of its symptoms and tried to assist it as quick as circumstances allowed them.

The veterinarians collected all samples they could in order to get a rapid diagnostic. Enclosed I am sending you the report from veterinarians.

The following day, November 18, at 5:00 a.m. fisherman from other fishing boat inform Mr. Miguel Marchi that late in the afternoon, the day before, had seen four stranded killer whales on the shore of the Bay and "Ria de Ajo"

Once Mundo Marino got this notice, at 8:00 a.m., sends people from his staff in a boat to verify which was the real situation. Once there, they found only one of the four specimens, possibly the other three could get free from the mud during the high tide.

They can observe, just like in the previous animals, serious skin sunburn and drying. Although the soil in this area was firmer, it presented a great difficulty, because it was a very plain area, and with low tide there was about two kilometers of extension with only 10 or 20 centimeters of water. The place could not be reached by boat. They only could get there by foot. The only choice left was to attend the animal the best they could, with the confidence that he would support this situation until the high tide, in order to get it out of there.

The next morning, November 19, rescue tasks started. All elements were prepared, boats, stretchers, mattress, etc.

It was a very hard work, which demanded several hours, but finally, 18:00 a.m. the animal arrived Mundo Marino. During this period of time, it was continuously attended, then the veterinarians took samples and keep continuous control of the animal.

The killer whale was taken to an auxiliary quarantine pool until we were sure about cause of the stranding or if it presented any infectious illness that could affect the other animals in the park.

In the meanwhile, it was controlled 24 hours a day.

To finish this report, I would like to express a few concepts about what we have been doing.

During the recent years, we have had to attend numerous cases if strandings. That why the professional staff of our oceanarium have been researching about possible causes that determine that the Samborombón Bay and nearby areas have a such high number of strandings .

Among pinnipeds, we could determine in a more or less exact way the causes for strandings of different species of seals, elephant seals, leopard seals for each particular individual and for different groups, that would be very extensive to enumerate. With penguins, we can be sure that most of them are problems originated by oil.

In cetaceans, we have comprobed strandings and have been rescuing calves of Mink Whale, numerous Pontoporia blainvillei calves, and also adults, common dolphins, whitesided dolphins, killer whales (some of them found dead). It is assumed that one of the principal causes are the particular characteristic of the sediments of the Samborombón Bah, formed by non compacted materials, most plastics. They are mud with high content of water. These sediments are characterized by their bad deflection of sound waves and they act as sound wave absorbers and that is why the echo localization systems of cetaceans would not work in the correct way under these circumstances.

To all this we must add a scientifically demonstrated cause, as one of the characteristics of the stranding zone in all the world: the shallow waters and minimal sloping. During low tides they represent "natural tramps" for cetaceans, because the inter tidal zones can reach kilometers of extension.

As you may note, we tried to make this report most simple possible, because it would be very extended to explain the numerous details involved. Any way, we are at your disposal in case you need additional information.

Sincerely,

Jose David Mendez
Director

Report N° 1

Today I have attended an stranded *Orcinus orca*. It is a male, 5.5 meters long, and about 2.800 kilograms.

We could observe loosening of the skin on the back of the animals, due to his exposition to sun during the stranding.

Once arrived, we could get samples that were sent to the lab.

a) Urine samples: we could observe a great number of RBC, presumably because of renal failure.
b) Blood work: There is an increase of WBC and increase of eosinophils (eosinophilia)
c) Blood chemistry: There is an increase of the enzymes GPT, GOT and LDH. Probably all these increases respond to muscle and liver lesions, typical of strandings.
d) Bacteriological Analysis: from feces and respiratory fluid. We are waiting for the typifying of the found bacteria.

The respiratory rate was continuously checked, and we could determine that the average of well over the normal values, reaching some times 100 respirations in 10 minutes. The normal value for this specie is 8 respirations in ten minutes.

During transport and almost when the animal was agonizing, it presented vomits with a great quantity of parasites. Some of these were identified as *Anisakis*, and this was coincident with the values found in blood.

The animal was dead because of a respiratory stop.

San Clemente del Tuyú, November 17, 1992

Dr. Julio Daniel Loureiro – Veterinarian.

Report N° 2

This report refers to the second specimen of *Orcinus orca* attended, from the multiple stranded occurred in November 17, 1992.

Following I'll refer to the clinical examination and the analysis performed.

This animal presents numerous skin lesions, specially in the area of dorsal fin.

With the first results of the analysis, we could determine that it presents leukocytosis with a notable eosinophylia, which could be suggesting that it has a very important quantity of parasites. Also the Phosphorous in blood is increased. We must relation this value with others in order to determine the pathology that is affecting him.

The respiratory rate is within normal values.

We are waiting for bacteriological culture of fecal samples, respiratory fluid and urine.

There is a permanent control during day and night to check the respiratory rate, behavior, and attention and care of the lesions in the skin and collection of fecal samples.

Up to now, the prognostic of this animal is guarded

San Clemente del Tuyú, November 19, 1992.

Dr. Julio Daniel Loureiro – Veterinarian

MUNDO MARINO

Document has had handwritten line numbers entered in the left margin

REPORT:

From:	Veterinary Section
For:	Directorate of Fauna
Requested by:	Jose David Mendez
Subject:	Present condition of the orca stranded on November of 92.
Date:	02-12-93

The skin lacerations due to the stranding were treated with different cicatrizant ointments and tissue regenerators, which enabled a satisfactory gradual change.
Different laboratory determinations were carried out.
The re-collection of fecal material was done using two different procedures, one directly from the animal's rectum, using a specially designed intestinal tube, and the other one, obtained directly from the pool (floating fecal material.)
Said orca feces qualitative study results were as follows: 45-micron diameter eggs, double walled, which match the Aniskasis eggs.
The technique used was by floating in a sweetened solution, with a density of 1:300.
To remove parasites, Oxfendazole was used. The dosage for this animal was set based upon its weight, divided in two doses, taken 24 hours apart.
During the following days, parasites were re-collected directly from the pool, and from the pre-filter as well. More than 300 specimens of Anisakis were collected, in addition to several Teniae, which will be classified by the professional team from the La Plata Veterinary Sciences Faculty (Facultad de Ciencias Veterinarias de La Plata [CEDIVE]), in accordance with an agreement between the Mundo Marino Foundation and the University of La Plata.
Given the characteristics of these animals, samples are not easy to obtain.
We are trying to re-collect more fecal material, in order to check the accuracy rate of the anti-parasitic agent, and to verify the quantity of Anisakis removed. The orca was medicated with mucous protectors, since these parasites produce large injuries in the walls of the stomach.
In order to control the development of the aforementioned injuries, a follow up should be carried out, through the study of the stomachic content. (Determination of the presence of red and white blood cells in the stomachic content).
Presently, we have been unable to perform this procedure, since the animal is not prepared for an easy stomachic fluid extraction, using a tube.
Regarding the aforementioned hyperphosphatenia, so far, we have been unable to relate it to any of the pathologies that have similar outcomes.
Some of the possible pathologies, than cannot be disregarded, are as follows:

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Translated from a copy on January 14, 2002
By: Mr Eduardo Zaldibar, Translator ID# 1066
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MUNDO MARINO

1)- Chronic renal insufficiency, uncertain origin.
2)- Different osseous processes.
3)- hypoparathyroidism, etc.

As I stated before, due to obvious reasons, it is difficult to extract biologic samples from these animals as we wish, as we can do with other animals.

Therefore, the progress for diagnosis and treatment is slower.

Finally, and based upon the above, I can state that the prognosis for the orca stranded on November 1992 is still reserved.

Illegible Signature
Julio Daniel Loureiro, MD
Veterinary

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Translated from a copy on January 14, 2002
By: Mr. Eduardo Zaldibar, Translator ID# 1066
Certification Attached

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928 Connetquot Avenue
Central Islip, NY 11722

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CERTIFICATION

This is to certify that the information in the attached translated document, a Memorandum from Veterinary Section, Mundo Marino, to Jose David Mendez, dated February 12, 1993, is true and correct. The document was translated from Spanish to English on January 14, 2002 by Mr. Eduardo Zaldibar, Translator ID# 1066. Mr. Zaldibar is fluent in Spanish and English, and is a registered translator and interpreter with Multinational Translating Service.

Signed: _____
Karen A. Miller, Partner
Multinational Translating Service, NY

County of Suffolk)
SS:
State of New York)

Sworn to before me this 2nd day of February, 2002

Notary Public: _____

My Commission Expires: _____
LEONARD P. CORAZZA
Notary Public, State of New York
No. 24-4835856
Qualified in Kings County
Commission Expires 2-28-2002

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Mar del Plata, December 1, 2001

Mr. Jose David Mendez
Mundo Marino, S.A.
Avenida Décima N° 157
(7105) San Clemente del Tuyú
Provincia de Buenos Aires

Dear Mr. Mendez:

I am glad to write you in response to your note dated November 17, 2001, regarding the present situation of an adult male Orca (Kshamenk) which is lodged in the facilities of the Mundo Marino Aquarium that, during some years, cohabitated with another adult female Orca specimen (Belen.)

Said partner, besides its show, has been part of a Breeding Program that your aquarium has been developing for some years. Afterwards, said program was truncated by the unexpected death of the female Orca specimen.

Since when events like this one occur it is necessary – as a professional standard – to perform an exhaustive general review of the situation, I consider that it will be more adequate from my part, to submit my point of view, as a general report of the situation, which I enclose to this letter.

Several aspects were reviewed in said document, such as the present living circumstances of the ORCA NAMED KSHAMENK, the capabilities of the lodging facilities, its possibilities with another species in the aquarium, and the general situation of the company. Based upon that, the various possible alternatives were reviewed to adopt in the future regarding said animal. In addition, the regulations in effect regarding aquaria and zoos, and the role of the appropriate statutory authorities regarding any of the decisions finally adopted were considered.

I hope this report is useful for you and for all the other agencies that are involved in the registry, control and transportation of wild fauna specimens.

Sincerely,

Dr. Ricardo Bastida
Marine Mammal Task Group Director (Grupo de Trabajo Mamiferos Marinos [UNMdP])
Full Professor, Department of Marine Sciences [UNMdP]
Lead Researcher CONICET

Prepared by Multinational Translating Service, NY
Translated from a faxed copy on December 14, 2001
By: Mr. Eduardo Zaldibar, Translator ID# 1066
Certification Attached

TECHNICAL REPORT

STATUS REVIEW OF THE ORCA NAMED KSHAMENK

MUNDO MARINO AQUARIUM
SAN CLEMENTE DEL TUYU
PROVINCE OF BS. AS. – ARGENTINA

Prepared by Multinational Translating Service, NY
Translated from a faxed copy on December 14, 2001
By: Mr. Eduardo Zaldibar, Translator ID# 1066
Certification Attached

TECHNICAL REPORT

STATUS REVIEW OF THE ORCA NAMED KSHAMENK

MUNDO MARINO AQUARIUM
SAN CLEMENTE DEL TUYU - PROVINCE OF BS. AS. – ARGENTINA
DECEMBER 2001

INTRODUCTION

Usually, the Marine Mammals Task Group, which reports to the Marine Sciences Department, Exact and Natural Sciences Faculty of the National University of Mar del Plata (Departamento de Ciencias Marinas, Facultad de Ciencias Exactas y Naturales de la Universidad Nacional de Mar del Plata), is consulted by governmental entities (National, Provincial and Municipal) and private *[entities]* as well, in matters related to Marine Mammals and their ecosystems.

These consultations include aspects covering not only biological and ecological matters, but also regulatory matters. They are all in relation to natural environments and artificial as well, such as aquaria, zoos, rehabilitation centers, etc.

In this case, we are providing a comprehensive review of the situation of an adult Orca specimen (*Orsinus Orca*), male that originally cohabited and coupled with an adult female Orca named Belen, with which he was part of a Breeding Program of marine birds and mammals, jointly undertaken between the Mundo Marino Aquarium and the Mundo Marino Foundation.

Said couple of Orcas was able to fully demonstrate their fertility with the pregnancy of the female, and normal development of the pregnancy, throughout the entire gestation period. However, by the end of said period, the calf miscarried, even though everything was perfectly normal.

This record undoubtedly offered promising expectations to further the Breeding Program of Orcas, once the recovery period, which the female had to undergo, was over. Unfortunately, months later, the unexpected death of the female specimen occurred, and the male entered into a new situation, since it stays on solitary specimen status. Under these circumstances, the Breeding Program for captive Orcas was suspended, and this prompted various options regarding the future of this Orca specimen, and probably regarding the comprehensive development projects of the Mundo Marino Aquarium.

Our purpose with this report is to investigate the various possible alternatives developing regarding this case, and to evaluate each alternative, with a wide and modern criterion; in order to have all parties involved exposed to the responsibilities they will have to assume, once one of the aforementioned alternatives is finally adopted.

Finally, it is important to clarify, that the nature of the suggestions provided on this report are not of mandatory compliance. Their main purpose is to highlight the basic features of each reviewed alternative, in order to provide a general panorama of the situation to the company and the appropriate statutory

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governmental authorities, based on our previous experience, not only in natural settings but also in several parks and specialized centers, here and abroad.

POSSIBLE ALTERNATIVES REGARDING THE PRESENT SITUATION OF THE ORCA NAMED KSHAMENK

Next, each of the alternatives under investigation will be considered, and should be reviewed and evaluated not only by Mundo Marino S.A. Company, but also by the other various applicable entities.

Alternative 1. The Orca named Kshamenk stays at the Mundo Marino Aquarium

Obviously, this alternative is one of the most convenient for the company, because this specimen exerts an important attraction to the public and is perfectly trained to perform spectacular shows of great impact.

However, for this animal- that presently is considered solitary- certain stress situations may occur, hence contributing to the development of certain illnesses. Thus, its socialization with other cetaceans should be encouraged to the limit, such as bottlenose dolphins (*Tursiops gephyreus= T. truncatus*), which I believe the company already started.

In turn, a series of actions oriented to an effective environment enrichment should be promoted, with the purpose of improving the quality of life of the Orca, and create, in turn, deeper social links with the dolphins and trainers.

On the other hand, it will be necessary to control the behavior of the group in accordance with the sexual activity of the Orca, which could increase during certain periods and under certain circumstances.

All the life support systems of the stadium and pools should work at their optimal level, in order to prevent the environmental factors from acting negatively upon the future quality of life of the animal.

It should be accepted that this alternative of life, though feasible, is not the most adequate for a such a sociable species and, specially, for a specimen that lived with a partner since its introduction to the aquarium; it would certainly be destined to live without another of its kind until death, and would therefore not be able to leave any offspring.

It should be noted that the present trend of most aquaria throughout the world keeping Orcas at their facilities, is to configure groups of individuals or pods, which provides a structure similar to that enjoyed by those who live in freedom in the wild.

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Alternative 2. Create a new couple of Orcas, by purchasing a female Orca.

Surely, this might be one of the first alternatives that may come to the mind of a dilettante in the field, and in addition, might enable the continuation of the Breeding Program for captive Orcas, as they are usually developed in most of the parks that have these animals. However, we know that the regulations in effect, either national or local, make it impossible to capture this or any other species of cetaceans.

In addition, since there is no female Orca specimen in any park in Argentina, it is impossible to negotiate its transport on a loan basis for breeding purposes. The alternative to do it from abroad is not feasible either, due to several reasons.

All aquaria that presently keep Orca specimens are in the Northern Hemisphere, and in principle, there is no female specimen available to be transported to the Southern Hemisphere. We know that most of the parks have their own ongoing breeding programs and in the event that eventually one specimen is available on a loan basis, surely it will never be sent to facilities with a lower level than the facilities in which it was previously being kept. It should be noted that, with the exception of the *Seaquarium* of Miami, the characteristics of the rest of the facilities in the world in which Orcas live are by far better than the characteristics of the facilities of Mundo Marino, though it should be pointed out that said characteristics are within the regulations in effect in their own country.

In addition to the aforementioned, the hypothetical case should also be considered that if another organization loans an Orca specimen, the receiving company should take care of all the insurance, technical and professional costs, the construction of the specially conditioned container for transportation, the contracting of the cargo plane, etc., associated with the animal. It can be figured that the amount of this investment is in the hundreds of thousands of dollars, given the situation of the country, and is something very difficult to fund for the Mundo Marino Company or any other company that might actually try to afford such expense. In addition, the pools expansion projects should be immediately resumed, but I estimate that the company will not be able to resume said works due to the Argentine economic and financial situation.

The alternative of any female Orca specimen getting stranded on our shores and the fact that its rehabilitation and return into the wild may not be done for a certain given reason, is obviously something that may not take place in the short and medium term. In addition, that might generate feelings of mistrust and speculation on behalf of certain non-governmental organizations, that may *[adversely]* affect the image they have of the company and the official authorities.

Therefore, we can conclude that this alternative is not feasible in practice, but its review is a contribution toward a better understanding of the problem under discussion.

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Alternative 3. Return of Kshamenk to its natural setting

The liberation of cetaceans that lived in captivity constitutes an impassioned practice that has become very common during the last decade.

Said practice was indeed inspired not only by the human feelings toward symbolic species, such as in the case of Orcas and dolphins, but also through the impact of popular campaigns orchestrated by some non-governmental organizations- not very serious ones- that seek personal, institutional or economic prestige rather than the welfare of the animals that they claim to protect.

Hidden behind these movements interesting businesses have developed, due to the ease of collecting funds, when the animals involved are so charismatic- because of the way society feels toward cetaceans.

Regardless the motives for the release of cetaceans, it should be pointed out that all of them are devoid of basic scientific content; thus the failure of all attempts up to this date. Among them, we can mention the famous project to reintegrate Keiko into the wild; surely the most expensive wild fauna "rescue" operation in history, which involved a single individual. This was recently acknowledged by the team pretending to have reintegrated Keiko to Orca social groups in Iceland, its place of origin.

No doubt that such an approach with Kshamenk will be a formula for disaster, in view of all the records available. In addition, in order to execute a project of this type it will be necessary to invest hundreds of thousands of dollars or even more, and in the end, the animal would not be able to survive in the wild. On top of that, the Company will lose the possibility of exposing the animal to the public. There is no question that with this alternative, none of the parties will be able to benefit at all.

Since it is very probable that we will hear voices demanding the release of captive marine mammals for quite some time, we consider it important to expend a little bit more *[time]* regarding this matter.

The concepts of fauna release into the wild have reached society mainly through massive media coverage; most of the time without serious foundation, aiming mainly to create a sentimental impact, more than the desire to produce a scientific account of a biological or environmental problem.

There is no question that the US has been the first country to address the marine mammal problem. This has been clearly stated through the *Marine Mammal Protection Act*, prepared by Congress, rendering that country as the one with more restrictions, controls and scientific endorsements in legal matters for marine mammal handling *[than any other]*. This regulation has been so stringent that in many aspects it has hindered scientific development of the knowledge of this fauna group, and for this reason it *[the fauna group]* must suffer due to the various amendments made to it to date.

Having said that, it is valid to assume that at the legal level said regulation is, presently, the most respectable, extensive and strict with regard to the goal of caring for the interests of the marine mammals.

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The *National Marine Fisheries Service* (NMFS), that reports to the NOAA, is the official organization in charge of the control and handling of the marine mammals; based upon the aforementioned provisions of said Act, it is interesting to know the position of this organization on our subject matter. But before we go on to that, it is helpful to define the technical terms, often used wrongly used in our country.

As stated by Stanley Price (1991), in the field of biological conservation, **reintroduction** is known as the technique used with captive animals and/or those born in the wild, to establish or reestablish wild populations in those natural settings in which the species has been affected by nature itself or by man. One aspect of this matter-which it is important to clarify- is that the purpose of the technique is to benefit the endangered species populations in the wild, not individuals that may be in excess in captivity or for that other reasons are not able to be kept any longer. Neither is the purpose of this technique to release animals due to sentimental capriciousness, or because of economic interests that are often dishonestly associated with them. Another point that should be highlighted is the fact that the reintroduction concept is limited to the endangered species; in the case of Orcas and bottlenose dolphins, which have been the species upon which "reintroduction" has been popularized, they are not considered as endangered species by any national or international organization.

Based upon these and other elements, the *National Marine Fisheries Service* (NMFS) holds the following position.

Since under the *Marine Mammal Protection Act*, Congress has appointed the NMFS to protect marine mammals in the wild, said service considers that the reintroduction of captive marine mammals into the wild has to be done in such a way that not only are the stocks and wild populations not harmed, but also to ensure the survival of the individual being released.

Said entity considers that presently there are no scientific protocols to reintroduce captive marine mammals into the wild (this should not be confused with the concrete possibility of rehabilitation and further release of marine mammals, when the medical care does not extend for a long period of time, and there are no recurrences of the illness that might harm the specimen during his free life.)

The NMFS states that scientific documentation and protocols with scientific foundations are basic for the responsible reintroduction of any captive animal into the wild. The US Congress expressly addressed this matter in 1994, regarding the dolphins maintained by the U.S. Navy. It should be reminded that the U.S. Navy, due to the governmental budgetary restrictions, was forced to abandon most of its scientific projects with marine mammals, due to which a high number of the dolphins were relocated in other centers, producing conflicts of a diverse nature with radical non-governmental organizations.

Although the media exerted great pressure upon the members of Congress to release the specimens instead of relocating them at other show places, Congress responded stating that any release of captive dolphins should be carried out in accordance with scientifically accepted protocols, establishing in the *Conference Report* of H.R. 4650 (P.L. 103-335) that::

"The conferees are informed that there are no scientifically established or accepted protocols for such releases. Moreover, documented success of previous attempts to reintroduce captive marine mammals to the wild is sparse. Accordingly, the conferees believe that any attempts at releasing Navy marine mammals to the wild should be pursued cautiously and on an experimental basis until scientifically sound protocols have been developed and reintroductions have proven successful. The conferees recognize that the Department of Defense does not have the authority to allow the return of once-captive Navy marine mammals into the wild. This authority rests with the Department of Commerce, through the National Marine Fisheries Service. Accordingly, the conferees direct the Navy to cooperate with the Secretary of Commerce and the Marine Mammal Commission in developing rigorous scientific protocols for experimental releases. Given the potentials for "takes" under the [MMPA] or the Endangered Species Act, the conferees direct that in no case shall any release be attempted unless authorized by a scientific research permit issued by the Secretary of Commerce under the appropriate statutory authority."

The reintroduction of animals into the wild implies the possibility of disease transmission to specimens and wild populations. Another aspect of the risk is related to the undesirable genetic exchanges between the introduced specimens and the stocks and endemic populations. Regarding the introduced specimens, it is important to assure the ability of the specimens to feed themselves and to defend themselves from predators, and to ensure that they do not have behaviors acquired while in captivity that might be negative to the social structure of the local wild populations as well, and also to ensure the full social assimilation of the released specimen.

Unfortunately, these problems were not considered in their real magnitude, until in recent years there were massive cetacean and pinniped deaths on US shores and in many other parts of the world. Most of these death cases were due to diseases, some of them never recorded before among the affected population. Given the present limited knowledge of marine mammal diseases, the prevention of introduction of diseases in nature is vital. Another aspect of the grave consequences to consider is the release into the wild of species or individuals that do not belong to the geographical area for introduction. There are unlimited records showing negative consequences in various environments, and there is concern for the long-term consequences that may carry genetic mixtures that would never have occurred in nature by itself, unless there was human intervention.

Another very important aspect to consider on this problem is the rehabilitation and release of pinniped and cetacean possibilities and techniques. For both groups, the situation should be focused differently; although the general handling and rehabilitation techniques are different for both groups, the ultimate goal is the same.

Considering its origin and its general habits, cetacean rehabilitation is much more complex that the rehabilitation for pinniped. In addition, cetacean behavioral matters are extremely complex and require a strong human

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participation, which renders their release almost impossible if deep human ties have been established, both socially and due to time.

The possibility of cetacean release depends greatly upon the type of rehabilitation they have been exposed to. For stranded animals, without serious health problems, it is possible to do short term rehabilitations and then release them. Our group has participated in such cases, with specimens of *franciscana* tangled in surface nets, shore stranding of Minke whales, false Orcas, and Orcas, which had no major problems. The veterinarians were able to release these animals after a hydration and a preventive antibiotic treatment, without any problem, during the high tide.

However, whenever a long-term treatment is necessary, due to an illness, due to deep wounds or due to excessive exposure to air and sun, the animal should be interned and should adapt to human care. If a long-term treatment is required or periodic sampling, cure or medications are needed, the animal should be trained to cooperate with the veterinary studies. As we all know, these animals cannot be successfully sedated alike the pinnipeds. In addition, cetaceans cannot be forced or kept out of water during treatment, because it causes an intense stress that will hinder any rehabilitation treatment with a modern approach.

The short captive and rehabilitated cetacean release history has provided scant documentation, also with questionable results, as stated by the NMFS.

It should be pointed out that the first dolphin releases are related to criminal cases, where captive specimens were stolen and then released at sea. All these cases resulted in the death of the specimens or their recapture in deplorable physical conditions. Given the level of improvisation and hidden motivation of these experiences, we are not willing to consider them as experiences to invalidate the cetacean release concept.

Therefore, following is a detail of the cases upon which there was work done with a stronger dedication and seriousness. They provide trustworthy references and are precisely the cases used by the advocate groups for cetacean release as the most successful, which in reality it not true.

Case 1.- Approximately seven years ago, a bottlenose dolphin was released in Brazil named *Flipper*. After release, the animal was spotted in several places, showing numerous wounds, probably caused by fishing nets or done by another of its species. It was frequently seen by swimmers, trying to interact and begging for food, which was not a good sign for an animal introduction. Many times it was seen as part of a group of another species of dolphins (Sotalia fluviatillis)(Rollo, 1994). Though this project caused concern and dedication before its release and further monitoring, the results showed that the specimen lacked adaptation, since it went to humans to get food and was unable to integrate to groups of its own species (Brill, 1995).

Case 2.- A project, which was widely and internationally publicized project was *Into the Blue* (McKenna, 1992), which had the purpose of releasing two bottlenose dolphins, one into the Atlantic Ocean and the other one into the

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Pacific Ocean, which had lived in British aquaria. The release was done at the Turk Islands and the Caicos Islands in the Caribbean, a zone that was very far from the place of origin of the specimens, causing the consequent concern and criticism of the scientific world, because of the potential consequences of genetic mixtures. The project was unable to record sightings to confirm the success of the release (Brill, 1995).

Case 3.- Another widely and internationally publicized dolphin release effort was carried out in Australia in 1992, and had the purpose to release into the wild specimens of dolphins that lived for years in an aquarium, and included also specimens born in captivity. The dolphin monitoring protocols were done in detail and all information was scientifically handled, hoping that a successful test would enable further releases following the same guidelines. In spite of that, the project was not successful, because out of the nine specimens released, three of them needed to be recaptured given their deplorable physical condition, one of the calves died, and there were no sightings of the rest of the specimens during a 43-day period after the release (Brill, 1995, NMFS, 1995).

This might have been the first serious release effort which, though not successful, provided data with scientific value for future experiences (Gales & Waples, 1993).

Cases 4 and 5.- The first two experiences which had the participation of the NMFS on dolphin release were in 1987 and 1989. In both cases, specimens sightings were almost nil during some weeks *[following]*, and then stopped completely. Surely, these negative results forced this governmental organization to forbid this type of project today (NMFS, 1996).

Case 6.- On May 1996, two specimens of bottlenose dolphins were illegally released into the Gulf of Mexico (Florida). Two weeks later the specimens were recaptured in different locations, both wounded, dehydrated and will severe weight loss (NMFS, 1996).

Regarding Orca release, there is presently no complete and successful case. In light of the negative records of dolphin release, and in view of the highly rigid social structure of the Orcas, there was always great doubt regarding the feasibility of this type of project.

Up to this date, the NMFS has not received any legal and technically acceptable request for the release of any specimen of Orca within the US. In spite of that, for years there have been several projects of non-governmental organizations that are involved in hefty fund raisings for the release of certain Orca specimens that live in aquaria in the US.

The only concrete case related to Orca release that we can refer to is the famous case of Keiko, related to the millionaire project *"Free Willy"*, of which the objective was the reintroduction of this specimen into the Icelandic waters.

Keiko was an Orca captured in said region when it was very young, that lived in solitude during several years in an aquarium in Mexico City. Said aquarium did not have the facilities that are required today to maintain this type

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of animal. This fact, along with its solitary condition and growth and weight gain, rendered the animal into a stressful situation that provoked a decrease in its defenses and it developed a severe skin condition.

Initially, none of the countries involved was willing to issue permits to carry on this project, in view of the aforementioned arguments and of the concern regarding a possible transmission of the disease the animal had. However, the popular campaign was so huge, and the response of the public was one of such solidarity, that several million dollars were collected, enough to ensure the execution of the entire procedure, in an optimized manner and keeping the utmost sanitary safeguard.

The first stage to cure the specimen was absolutely successful based upon the medical treatment, and fundamentally, due to the notable improvement of the living conditions of the animal, which was kept in a modern pool with a latest generation *life support system* from the US, and due to the assistance of the best biologists and veterinarians specializing in Orcas.

The following stage of semi-captivity off the Icelandic shores needed to be extended for quite some time, in view of the behavior of the animal. The last stage of the project, which consisted of its release and integration to other local Orca groups, did not produce the expected success; finally, Keiko was unable to break the ties that united it with humans, while the Orcas local groups were not willing to accept Keiko's integration to their social organization.

In short, what many of us foresaw happened due to the scarcity of technical records in the field. In spite of that, there is no doubt that Keiko's living conditions were dramatically improved, but in light of the obtained results, we conclude that it might have been much better for the animal to get a partner, reproduce itself, and integrate to a social group in some high-level aquarium.

The details of the Keiko project can be directly consulted on the Internet, though it is important to consider that the information was produced by those who handled the project, which renders it not as objective as it should be. Our sources of information are always supplemented with comments from some of the professionals who worked on the project, and by others who are consulted as counselors. But as we stated above, the people responsible for the Keiko project publicly acknowledged that Keiko was unable to break its ties with humans, and that the local Orca pods were not willing to accept its definitive integration.

Coming back to the situation with the Orca named Kshamenk, and in light of the aforementioned arguments and cases, it looks as though its release into the wild would be the alternative we would least recommend.

Alternative 4. Kshamenk's integration to a breeding program in another aquarium.

The review of the aforementioned alternatives, and the balance of the advantages and disadvantages of each, leads us naturally to the last alternative, coinciding with what motivated Mundo Marino S.A. to request our professional opinion.

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Before reviewing the agreement arranged between Mundo Marino S.A. and Six Flags Theme Park, Inc, in relationship to the possible breeding loan of the male Orca specimen from the first entity, it is helpful to address the diverse technical possibilities in the breeding of captive wild species.

Since the beginning of the 20th century, the exchange of specimens of wild fauna between parks in different locations has turned into a frequent practice. Part of that exchange has been related to the need to create breeding couples of generally endangered species, and also for the purposes of allowing a renovation or genetic diversification of breeding groups of diverse wild species.

During the second half of the 20th century, and based upon the development achieved in the breeding techniques of several livestock species, the application of said scientific and technical knowledge starts in wild species. Since the beginning, they are narrowed to artificial insemination by using spermatozoa obtained from the progenitor through diverse techniques. Later on, the spectrum of possibilities widened notably, through the insemination of ovules and embryo implants, which can be kept unaltered for very long periods and may be transported great distances, by means of quick freezing techniques at very low temperatures.

However, the development of these breeding techniques for wild animals is far behind that of domestic species; in reality, wide experience in artificial insemination matters of wild species, is far below it. It is evident that, until now, there are not enough base studies in most of the wild species, though there has been an increment of said research during the last years, probably due to the accelerated disappearance of many species in different areas of the planet. This prompted the developed countries to create genetic material banks- of any kind- with the purpose of preventing the disappearance of many endangered species and allowing in turn, the conservation of the biodiversity of the main ecosystems of our planet.

Regarding the cetaceans, it has been more than one decade since some research centers started developing research into artificial insemination techniques. Said techniques provided reasonable results for bottlenose dolphins (*Tursiops truncatus*), though given the numerous stocks in captivity of this species, we can state that, at least from a practical point of view, it has not been a very relevant contribution. However, their application in Orcas is very promising, because their population in the aquaria and in nature was lower, and also, because of the transportation difficulties related to these big specimens between different aquaria.

Unfortunately, during many years, the protocols and techniques developed for bottlenose dolphins did not produce the expected results for Orcas. Only recently a single research group-, which belongs to the Sea World Aquarium-, was able to achieve the first Orca birth through artificial insemination. This technique will require several years to be standardized.

Regarding the insemination and implantation of fertilized ovules and embryos into cetaceans, these procedures are in their early stages, and not yet published through scientific publications.

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That is why, for the time being, any possibility of exchange between aquaria based upon the delivery of Kshamenk's sperm samples, should be discarded.

As we previously stated, the techniques are not developed enough to ensure the success of these procedures in Orcas, and if achieved, the standards indicate that the exchange of the offspring in lieu of sperm samples can be only achieved after some years. Therefore, Kshamenk's solitary condition may not be solved by means of a breeding system.

Final conclusions on the various aforementioned alternatives.

This overall review may be indicating to us that the best alternative for Kshamenk's future might be its transfer from Mundo Marino, on a loan basis, to a center in which Kshamenk can fully demonstrate the possibility of being integrated into a Breeding Program. This in turn will allow the adequate integration of Kshamenk into a new social group through which it may reach a better quality of life.

Although Kshamenk's transfer will mean that Mundo Marino Aquarium will lose the opportunity to show a species of public interest, Mundo Marino Aquarium will on the other hand gain entrepreneurial peace of mind, because it will ensure a better life for the animal and will prevent risky situations for the individual. In addition, with this option, the appropriate statutory authorities will support a traditional practice regarding inter-institutional loans of wild fauna for breeding processes, and also, will ensure a better quality of life for the animal.

The success of the breeding program opens to Mundo Marino S.A. the possibility of receiving some of the future offspring that may come from Kshamenk and the possible return of the same breeding specimen as well, creating a local social group.

From the scientific standpoint, Kshamenk's genetic contribution to the captive populations in the Northern Hemisphere will be invaluable. That will notably facilitate the diversification of the genetic capacity of the Orca groups actually captive, and probably will enable future generations to have better biological and sanitary alternatives.

Consequently, the Kshamenk case may evolve into a paradigmatic event, since it is the last real alternative for captive Orcas throughout the world to get a profound genetic enrichment. We should remember that given the regulations in most of the countries, the incorporation of new Orca specimens from the wild is practically impossible.

Thus better genetic exchanges will be possible and surely it will be possible to configure an international Orca stud-book in order to ensure- for many decades- the best crossbreeds among different groups that live in different aquaria throughout the world.

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Conditions to fulfill for loaning Kshamenk as a breeder.

Both, Mundo Marino S.A. and the appropriate statutory authority should be able to ensure a series of aspects regarding the loan, transfer and permanence abroad of the specimen.

They refer to a series of concerns, as follows:

- Overall sanitary condition of the animal to be transferred, complying with all Argentine and US regulations in the matter.
- Legal structure of the Agreement to be signed by both companies.
- Overall conditions of the facilities of the receiving institution (measurements, life support systems, etc.) that will keep the specimen.
- Background of the participating professionals in the Breeding Program and the general handling of the animals.
- Transportation system to be used (technical features of the conditioned container, type of aircraft, itinerary, accompanying team, total travel time, etc.)
- Inter-company communication system, for a close control of Kshamenk's evolution and the execution of the Breeding Program.
- Educative and scientific transfer starting with the loaned specimen and the program in which it participates.

Review of the records submitted by Mundo Marino S.A. Company, regarding the Agreement subscribed with Six Flags Theme Parks, Inc. (US).

- The Agreement seems to consider, from the legal stand point, the corresponding fundamental points, and responds to the traditional format for this type of contract.
- The basic forms from the appropriate Argentine and US statutory authorities, to facilitate the egress and the ingress of the animal are included.
- The female Orca Shouka, designated to couple with Kshamenk fulfills all the basic requisites for a breeding program, and also is the first generation born in captivity at the Marineland Aquarium. Since it is the daughter of specimens originating in Iceland, its crossbreeding with Kshamenk will avoid any crossing with other specimens of the genetically related group.
- The pools, and the life support system that regulates them as well, fully fulfills all the requirements for breeding settings and the established regulations by the *Marine Mammal Protection Act* that fully surpasses the requisites of the Argentine regulations.

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- The roster of technicians, biologists, and veterinarians related to the Breeding Program, and the overall handling of the Orcas is second to none, and has many years of experience. I know many of them personally, since I met them, years ago, at Marine World Africa-US and Sea World.
- The proposed air transportation and the design of the conditioned container is adequate for the case. The animal will have a specialized team besides it during the entire flight, which will monitor all the vital parameters.
- The new park of *Six Flags Theme Parks, Inc. (ex Sea World of Ohio)* has very good educational and research programs. These programs will facilitate a good information exchange that may be generated relating to the specimen given on breeding loan, and all of its offspring.

CONCLUSION

After reviewing all the possible alternatives to adopt, regarding the Orca named Kshamenk, we conclude that the best one- not only for the animal, but for the involved institutions as well- is to lend the Orca, on a breeding loan basis, to an institution with entrepreneurial and scientific prestige, such as the one proposed by Mundo Marino S.A.

Since the reviewed documentation and records have been very ample, we limited our comments to those aspects, which we considered to be relevant. These aspects may be expanded upon request, or you may refer to other matters that you might consider interesting.

Dr. Ricardo Bastida
Marine Mammal Task Group Director
Department of Marine Sciences
National University of Mar del Plata
Lead Researcher CONICET

Mar del Plata, December 2001

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"In any language, communication is our business"

CERTIFICATION

This is to certify that the information in the attached translated document, a letter from Dr. Ricardo Bastida to Jose David Mendez, and accompanying Technical Report dated December 1, 2001, is true and correct. The documents were translated from Spanish to English on December 14, 2001 by Mr. Eduardo Zaldibar, Translator ID# 1066. Mr. Zaldibar is fluent in Spanish and English, and is a registered translator and interpreter with Multinational Translating Service.

Signed: _____
Karen A. Miller, Partner
Multinational Translating Service, NY

County of Suffolk)
SS:
State of New York)

Sworn to before me this 2nd day of February, 2002

Notary Public: _____

My Commission Expires: _____

LEONARD P. CORAZZA
Notary Public, State of New York
No. 24-4855856
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April 23, 1993

To: Dr. Ricardo Batlda
Mundo Marino S.A. FAX: 54 252 21501

From: Dr. Louis M. Herman
Director

Thank you for informing me of the killer whale stranding in Samborombon Bay beach in November of 1992, and your efforts to rehabilitate the animal at your facility. I am happy to hear that the animal is now doing well..

It would be very difficult to reintroduce this whale successfully back into the wild, if it could be done at all. Any reintroduction program would require a long-term and expensive effort, followed by a long period of monitoring the whale thereafter through radio-transmitters if you wish to know the status of the animal. In no way can it be recommended to simply place the animal back into the waters near where it stranded. Even with the best of efforts, the outcome could be the death of the animal.

The most extensive studies of killer whales have been made in Puget Sound in Washington State and near Vancouver, Canada. These studies reveal that there are two types of pods--residents and transients. The residents can be found within the same general area from month to month and year to year. In contrast, the transients are only seen occasionally and their whereabouts otherwise are generally not known. The whale that stranded in Samborombon Bay and that is now in your facility may well be from a transient pod. If so, the whereabouts of its other pod members would be unknown, and its reintroduction would be even more perilous. Without the support of other pod members, the lone orca would have immense difficulty in locating and capturing prey, and may likely starve or become so weakened that it would succumb to illness.

From my own experience with bottlenosed dolphins, it is clear that without an extensive retraining and readaptation period, death is very likely, and may be preceded by a period of high stress. Hence, my opinion is that the best decision for the orca in question is to continue to maintain it at your facility, making every effort to provide it with the best possible environment, paying attention to its social needs and providing intellectual stimulation as well as good physical care.

I will remain very interested in knowing how things do develop with this animal.

My best regards to you and to the rest of the staff at Mundo Marino. I still remember the warm hospitality we received during our visit.

Biologist Delphinarium

TELEFAX

von/from:
Dr. Lorenzo von Fersen
Tiergarten Nürnberg
8500 NÜRNBERG 30
Germany
Fax: 0049 - 911 - 546365

an/to:
Dr. Ricardo Bastida
Mundo Marino
SAN CLEMENTE DEL TUYU
Argentina
Fax: 0054 - 252 - 21501

Nürnberg, 28 de Marzo de 1993

Querido Ricardo,
acabo de recibir tu Fax. Muchas gracias. Perdoname que te escriba tan tarde pero recien hoy he vuelto a Nürnberg. Con respecto al animal varado estoy convencido que han hecho lo correcto en llevarlo a Mundo Marino. Analisis realizados en animales varados han demonstrado que es dificil determinar a simple vista las causas que provocan los varamientos masivos observados en cetaceos. Por ejemplo aqui en las costas europeas hemos tenido varias experiencias con varamientos de Phocoena phocoena. En la mayoria de los casos no se pudo determinar con certeza las causas de dichos varamientos. Algo que se ha encontrado en muchos animales varados son contaminantes del tipo PCB. Los niveles en animales varados por lo menos fueron muchos mas elevados que los encontrados en animales cazados con redes. Se piensa que el PCB no es la causa inmediata pero parece que debilita las defensas del animal (ver Kuiken et al., 1993).

Existen muchos casos en donde animales varados fueron socorridos y posteriormente liberados. Desgraciadamente muchos animales asistidos de esta manera fueron encontrados muertos algunos dias despues. A raiz de que procesos de recuperacion in situ no han tenido el exito esperado estimo correcta vuestra decision en llevar al animal a Mundo Marino para su total recuperacion.

Con respecto a tu pregunta sobre la posibilidad de liberar al animal, no creo que esta medida sea la mas conveniente para el animal. Mi argumentacion al respecto se basa en tres puntos:

a) Lamentablemente no hay datos sobre experiencias previas que demuestren que la liberacion de una especie de cetaceo haya culminado exitosamente. Los pocos intentos de liberacion de delfines fueron llevados a cabo por instituciones poco serias y sin experiencia. Los resultados de dichas operaciones son desconocidos. La unica manera de poder decidir objetivamente que la liberacion fue exitosa es un monitoreo de por lo menos unos 6 a 8 meses. Lamentablemente por razones tecnicas es imposible realizar un monitoreo de este tipo. Es mas, una operacion de este tipo tampoco esta en el interes del IUCN, especialmente por tratarse de un solo individuo y ademas de una especie que figura como "not threatened" (no amenazada) en el report *Dolphins, Porpoises, and Whales; An Action Plan for the Conservation of Biological Diversity: 1988-1992, by W.F. Perrin and Compiled by the IUCN/SSC Cetacean Specialist Group & U.S. National Marine Fisheries Service,*

b) El hecho de que el grupo al cual pertenecia el macho encontrado no es un grupo residente en el area, hace aun mas dificil las posibilidades de su sobrevivencia.

c) Por ultimo no hay que olvidarse del estado de salud del animal. Por ello no creo que una liberacion precipitada del animal sea lo mas acertado.

EcoCepts International

Zoological Concepts:
Consultation & Design

Frank S. Todd
Executive Director

3/22/93

Dr. Ricardo Bastida
Director: Fundacion Mundo Marino
Avda. Decima No. 157-C.C. No. 6
7105 San Clemente del Tuyu
Pcia. Buenos Aries
ARGENTINA

Dear Dr. Bastida,

I have recently been made aware of your situation with the stranded killer whale. Please excuse me for not responding sooner, but I have been working in the Antarctic since October, and have only recently returned. It is my understanding that Mundo Marino salvaged a stranded young male killer whale in November, 1992, and that the orca subsequently responded to expert medical treatment and is currently maintained at the oceanarium. I also understand that Mundo Marino is under some pressure to now release the animal.

I have considerable experience with marine mammals, both in the field and in controlled environments. I was employed for 16 years at Sea World as corporate vice-president/animal services, so I am well acquainted with the enormous problems associated with salvaging stranded whales and dolphins. As you are aware, successfully salvaging and treating stranded cetaceans is extremely difficult and, even under the best of conditions, most fail to survive. This is especially true of a beached cetacean as large as a killer whale. The fact that Mundo Marino has successfully salvaged, transported, and treated three beached orcas speaks very highly for the organization, and the skilled and dedicated personnel that work there.

I believe to attempt to release the killer whale that stranded in November would be a grave error. First of all, it is highly unlikely that it would survive. Orcas are especially social animals, and to enhance the chances of a successful release the whale would have to be released in the company of it's original pod. Exactly how one would determine which pod it originally came from is not known to

8958 Kobe Way, San Diego, California 92123, USA (619) 565-1837

me. The mere physical task of transporting the orca for a release involves some, perhaps considerable, risk to the animal.

I fail to understand why there is pressure to release the whale. For one thing, there is no real evidence that the release of *any* stranded cetacean has ever succeeded in the long run. The only example that I can think of where a release might have succeeded concerned a grey whale that was captured as a calf by Sea World in the early 1970's. However, this was not a stranded animal, but rather a thriving, healthy calf. It was captured for research purposes, and there was never any intent to maintain it in captivity indefinitely. It was released a year later at considerable expense, and might have been sighted the following year, but the sighting was controversial and never confirmed.

Over the years, numerous stranded dolphins of various species, pilot whales, and pseudorcas have been recovered, treated, and later released. So far as I am aware, there is no proof whatsoever that any of these animals survived for a year or more. In addition, there is no real evidence that stranded animals that are apparently healthy and simply pushed back to sea survive either.

With respect to this specific male killer whale, there is nothing at all to be gained by releasing it at this point. Had the qualified personnel at Mundo Marino not rescued it, the whale would already have long since perished. Orcas are not endangered, or even threatened, and are cosmopolitan in distribution. Indeed, I have frequently encountered herds of killer whales in Antarctic waters exceeding 100 individuals.

Mundo Marino already maintains a rehabilitated female killer whale, so to release this male would appear to be counterproductive. The research and educational value alone of a pair of controlled environment potential breeding killer whales is beyond calculation. In sum, the male orca is far more valuable where it is, even if a release was successful and the whale survived long term. In other words, there is nothing whatsoever to be gained by a

release, and everything to lose.

Most qualified professionals that have had considerable experience with cetaceans would also agree than a release attempt would be inadvisable. Field biologists have little or no hands-on experience, but this is not the case with oceanarium professionals because they are the ones that have to do all the work, and are most aware of how complicated a procedure this is.

If you wish additional professional opinions on this, may I suggest that you contact Dr. Lanny Cornell (2437 Singing Trails Court, El Cajon, California, 92021), Dr. Joe Jehl (Hubbs/Sea World Research Institute, San Diego), Dr. Steve Leatherwood (P.O. Box 1090, Solana Beach, California, 92075), Dr. Bill Braker (Director, Shedd Aquarium, 1200 South Lake Shore Drive, Chicago, Illinois, 60605), Dr. Lou Herman in Hawaii, or Brad Andrews and Drs. Mike Walsh and Dan Odell at Sea World in Orlando, Florida. If you require additional experts, let me know, and I will provide more.

Thank you for appraising me of this situation, and I hope that reason ultimately prevails, and that the rehabilitated beached male killer whale will live a long and productive life at Mundo Marino with the female that is a long time resident there. If you require additional information, please feel free to contact me at any time.

Very sincerely yours,

Frank S. Todd

European Association for Aquatic Mammals

President: Prof. Dr. J.L. van HAAFTEN
Secretary / Treasurer: V.J.A. MANTON
Chartley House,
Swannells Wood,
Studham,
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Bedfordshire,
LU6 2QB, U.K Fax: 0-582-872315

19th April 1993

Dear Colleague,

I have recently heard from a member of ours - Martin Huigen from Munster - about the problems you are experiencing regarding the future of the Killer Whale you found stranded on the Samborombon Bay beach at the end of November 1992. While not willing to comment on individual cases of non-members of our Association, I can state categorically that the release of captive Cetacea to the wild poses enormous problems and is seldom successful in the long term, even after massive efforts involving large sums of money. Learning from the Atlantis experience in Australia has taught us that the welfare of captive animals is best addressed in the facilities to which they have become accustomed. That is why the decision has been reached with the Barcelona Killer Whale that she should be transported to join other captive animals in the States rather than released to an uncertain fate in the open sea.
As you know Killer Whales live in pods who each have their own 'language' learnt from calfhood. To release animals outside this closely knit grouping would be similar to incarcerating you or me in a culture strange to us with a different language and one where the residents are not keen or willing to assist us in any way. However even if the pod from which this animal had come could be identified (a very dubious possibility) then there is no proof that your animal would be able to support himself on live fish. Evidence from the wild of released captive animals shows in most cases (and all those closely monitored) that failure results in the death of the animal unless it be caught again and returned to captivity.

In the absence therefore of any concrete evidence to the contrary, the present advice is not to consider release into the wild if the welfare of the animal concerned is to be considered.

Yours sincerely,

Von/from
Dr. Lorenzo von Fersen
Tiergarten Nurnberg
8500 NURNBERG 30
Germany
Fax 0049 911 546365

To: Dr. Ricardo Bastida
Mundo Marino – San Clemente del Tuyú, Argentina
0054 252 21501

Dear Ricardo,

I have just received your fax. Thank you very much. Sorry for this late answer, but I have just arrived Nurnberg. Regarding the stranded animal I am convinced that you have taken the correct decision when you moved it to Mundo Marino. Analysis performed in stranded animals have demonstrated that it is very difficult to determine just with only seeing the animal the causes that provoked the massive strandings observed in cetaceans. For example, in European coasts we have had several experiences with *Phocoena phocoena* strandings. In most cases we could not certainly determine the causes of these strandings. Something that we have found in a lot of stranded animals are contaminants type PCB. The levels in stranded animals, at least, were higher than the ones found in animals entangled. It is supposed that the PCB is not the direct or immediate cause, but it seems that it affects the inmunosystem in the animals (Kuiken et al., 1993)

There are a lot of cases where stranded animals were rescued and then released. Unfortunately a lot of these animals helped this way were found dead a few days latter. Because these procedures of rehabilitation in situ have not had the expected success, I consider your decision of taking the animal to Mundo Marino for his total rehabilitation has been correct.

Regarding your question about the possibility of releasing this animal, I think this is not the most convenient choice for it. My opinion is mainly based in three points:

a) Unfortunately there are no records about previous experiences that demonstrate that the release of a cetacean had been successful. The only way to be able to decide objectively whether the release has been successful or not is to control it for about 6 to 8 months. Unfortunately, because of technical reasons it is impossible to perform a control like this. Moreover, an operative like this is not of interest to the IUCN, specially because it is only one individual, and also because it is a specie considered "not threatened" in the report Dolphins, Porpoises, and Whales: An Action Plan for the Conservation of Biological Diversity: 1988, 1992, by W.F. Perrin and Compiled by the IUCN/SSC Cetacean Specialist Group & U.S. National Marine Fisheries Service.
b) The fact that the pod from which the found animal come from is not a resident group in the area, would make more difficult his possibilities of survival.
c) Finally, we must consider the health condition of the animal. That is why I don`t think that a quick release of the animal be the best choice.

It is logical that the rehabilitation process in this case involves the conditioning of the animal to new environmental circumstances. I am convinced that with these techniques

a complete study of the animal could be performed without stressing the animal. This study should include physiological analysis, and if possible also behavior analysis which could give important information in order to get a better understanding about massive strandings observed in cetaceans.

As far as I know, and as far as I have heard, I think that your institution has the necessary conditions to face an operative like this. Your wide experience in rehabilitation of Killer Whales and the presence of a female specimen are important requirements for a successful recovering of the animal.

Following I am sending the address of a person who is working in the proyect "stranding network" in Mississipi, USA, Dr. Moby Solangi, Marine Life Oceanarium, P.O.Box 4078, Gulfport MS 39502-4078, USA, Fax (601) 863-3673.

I hope you have success and if you need any more information, don`t hesitate to contact me. Please pass my regards to all members of Mendez Family,

Kind regards and an embrace,

Dr. Lorenzo von Fersen

TELEFAX

von/from:
Dr. Lorenzo von Fersen
Tiergarten Nürnberg
8500 NÜRNBERG 30
Germany
Fax: 0049 - 911 - 546365

an/to:
Dr. Ricardo Bastida
Mundo Marino
SAN CLEMENTE DEL TUYU
Argentina
Fax: 0054 - 252 - 21501

Nürnberg, 28 de Marzo de 1993

Querido Ricardo,
acabo de recibir tu Fax. Muchas gracias. Perdoname que te escriba tan tarde pero recien hoy he vuelto a Nürnberg. Con respecto al animal varado estoy convencido que han hecho lo correcto en llevarlo a Mundo Marino. Analisis realizados en animales varados han demonstrado que es dificil determinar a simple vista las causas que provocan los varamientos masivos observados en cetaceos. Por ejemplo aqui en las costas europeas hemos tenido varias experiencias con varamientos de Phocoena phocoena. En la mayoria de los casos no se pudo determinar con certeza las causas de dichos varamientos. Algo que se ha encontrado en muchos animales varados son contaminantes del tipo PCB. Los niveles en animales varados por lo menos fueron muchos mas elevados que los encontrados en animales cazados con redes. Se piensa que el PCB no es la causa inmediata pero parece que debilita las defensas del animal (ver Kuiken et al., 1993).

Existen muchos casos en donde animales varados fueron socorridos y posteriormente liberados. Desgraciadamente muchos animales asistidos de esta manera fueron encontrados muertos algunos dias despues. A raiz de que procesos de recuperacion in situ no han tenido el exito esperado estimo correcta vuestra decision en llevar al animal a Mundo Marino para su total recuperacion.

Con respecto a tu pregunta sobre la posibilidad de liberar al animal, no creo que esta medida sea la mas conveniente para el animal. Mi argumentacion al respecto se basa en tres puntos:

a) Lamentablemente no hay datos sobre experiencias previas que demuestren que la liberacion de una especie de cetaceo haya culminado exitosamente. Los pocos intentos de liberacion de delfines fueron llevados a cabo por instituciones poco serias y sin experiencia. Los resultados de dichas operaciones son desconocidos. La unica manera de poder decidir objetivamente que la liberacion fue exitosa es un monitoreo de por lo menos unos 6 a 8 meses. Lamentablemente por razones tecnicas es imposible realizar un monitoreo de este tipo. Es mas, una operacion de este tipo tampoco esta en el interes del IUCN, especialmente por tratarse de un solo individuo y ademas de una especie que figura como "not threatened" (no amenazada) en el report *Dolphins, Porpoises, and Whales: An Action Plan for the Conservation of Biological Diversity: 1988-1992, by W.F. Perrin and Compiled by the IUCN/SSC Cetacean Specialist Group & U.S. National Marine Fisheries Service.*

b) El hecho de que el grupo al cual pertenecia el macho encontrado no es un grupo residente en el area, hace aun mas dificil las posibilidades de su sobrevivencia.

c) Por ultimo no hay que olvidarse del estado de salud del animal. Por ello no creo que una liberacion precipitada del animal sea lo mas acertado.

Es logico que el proceso de recuperacion en este caso lleva consigo un proceso de acostumbramiento a nuevas condiciones ambientales, parte del cual incluye tecnicas de condicionamiento. Estoy convencido de que con estas tecnicas se podria realizar un estudio completo sin la necesidad de estresar al animal. Este estudio deberia incluir estudios fisiologicos y de ser posible tambien analisis del comportamiento los cuales podrian aportar datos importantes para poder comprender mejor fenomenos como los varamientos masivos observados en cetaceos.

Por lo que conozco y por lo que he escuchado pienso que vuestra institucion brinda las condiciones necesarias para encarar una operacion de este tipo. Vuestra vasta experiencia en la recuperacion de Orcas y la presencia de un ejemplar hembra en vuestra institucion son requisitos importantes para una exitosa recuperacion del animal.

A continuacion te doy la direccion de una persona que trabaja en el proyecto "stranding network" en Mississipi, USA. *Dr. Moby Solangi; Marine Life Oceanarium, P.O. BOX 4078, Gulfport, MS 39502-4078, USA, FAX: (601) 863-3673.*

Espero que tengan exito y si necesitas mas informacion aqui estoy a tu disposicion. Por favor enviale muchos saludos a todos los integrantes de la Familia Mendez. Cordiales saludos y un abrazo

Dr. Lorenzo von Fersen

Fundacion Mundo Marino
Dr. Ricardo Bastida
San Clemente del Tuyú
Argentina

Dr. Guido Dehnhardt
University of Bielefeld
Department for Ethology
Morgenbreede 45
W-4800 Bielefeld, FRG

Münster, 24.03.1993

Dear Dr. Bastida,

my congratulation for the successful rehabilitation of the stranded killer whale. In my opinion it does not make any sense to bring this animal back to the ocean. Let me list up several arguments for this opinion.

1. From the ecological point of view the release of a single animal does not contribute to the survival of a species. As long as it is clear that this animal stranded without human influence it is a victim of natural selection and humans should not interfere in this process. The method of releasing animals should only be used for highly endangered species as a last way for their rescue (see guidelines of the IUCN). *Orcinus orca* is not such a species. Till today we can not calculate the influence that animals kept temporarely in human care have on their wild conspecifics.

2. Releasing an Orca does not just mean to throw it back to the ocean. If the project should have any chance of success it must be very well prepared. This needs the involvement of many experts in this field and costs a lot of time and money. At minimum you would need a year. Even if everything is prepared perfectly the chance that the animal would survive is very very small. For this reason social living animals like e.g. primates are usually only released as socially functional groups. Single animals would not have a chance to survive. The same would be true for cetaceans. So to put such an amount of work and money into this project would be a waste.
From the animals point of view it would mean to send it back to death.

My suggestion is to keep this animal at Mundo Marino for educational, research and breeding

their conspecifics in the wild would have a more positive effect for the wild population than any releasing activities.

I hope this short statement will help you to find a decision,

sincerely yours



Dr. Guido Dehnhardt

1464-18, Higashi-cho, Kamogawa-shi, Chiba 296, Japan
Tel.04709-2-2121 Fax.04709-3-3084

March 18, 1993

Dr. Ricardo Bastida
Director de Fauna
Mundo Marino S.A.
7105 San Clemente del Tuyú
Pcia.
Buenos Aires
Argentina

Dear Dr. Bastida:

Thank you for your two Fax letters of March 15, 1993. I appreciate your attendance and cooperation at our Symposium. I am pleased to learn that you are back in Argentine safely. We also hope to have the opportunity to grow the friendly relationship between our two institutions in the future.

In response to your inquiry regarding a rescued young male killer whale, I understand your present situation. I would like to recommend that the most suitable option is to promote the captive breeding program between this whale and other female killer whale in your institute in the future as you thought.

According to the latest personal information, British Government permitted the park to only sell the dolphins to the best oceanarium in Europe, not to release them back in the wild at the time of the closing of the Windsor Safari Park in England.

Canadian Government also judged in the enclosed copy of a report on the capture and maintenance of cetaceans in Canada published by the Advisory Committee on Marine Mammals for the Minister of Fisheries and Oceans, Goverment of Canada. That is, given the present state of knowledge, the release to the wild of cet ceans that have been in captivity for extended periods appropriate.

For the above reasons, I would like to recommend on your stranded killer whale that you will proceed to form a breeding group in captivity as you thought. I am also thinking that this is the recent trend of the world for the stranded cetaceans and the most appropriate conservation method of the Marine Mammals.

SEA WORLD
1464-18, Higashi-cho, Kamogawa-shi, Chiba 296, Japan
Tel.04709-2-2121 Fax.04709-3-3084

I sincerely hope my opinion is helpful for your stranded killer whale. If you have any further inquiries on this matter or you would like to exchange views on any other subject, please do not hesitate to contact me.

Sincerely,

Teruo Tobayama, Ph.D.
Director

TT/ka

Enclosure
Copy sent via Fax.

X. THE RELEASE OF CAPTIVE CETACEANS INTO THE WILD

The thought expressed in this proposal, to return captive cetaceans to the wild, is an aesthetically attractive one. It is possible to imagine taking an animal into an aquarium for a year or two to serve as a source of education or research and then returning it to the area of its origin taking with it a host of experiences.

Cetaceans have indeed been taken from the wild and kept in confinement for weeks or months as research subjects or for rehabilitation after stranding, and then released. But these were generally short periods during which the animal was maintained close to its point of origin and out of contact with other species.

As the concept goes, it should be possible to retrain an animal, that has been held in an aquarium for years, to make a living in the wild and then release it to return to its "Family" and to live out a normal life span. Unfortunately putting the idea into practice involves many unknowns

The task of training any of the present aquarium species to kill their prey would be relatively easy but though this is an essential prerequisite for wild living it is not a sufficient capability.

All the toothed whales are predators and in all predators to survive requires a series of complex skills plus physical and physiological competence. There have been successful reintroductions in some terrestrial carnivores and it should be possible with some species of cetaceans.

In contemplating a release back into the wild there are three concerns:

1. Concern for the well being of the individual animal being released.
2. Concern for the wild individuals of the species and other species in the same habitat; and
3. Concern for humans using the same environment.

Concern for the individual includes making sure that the animal can kill its own prey. But much more difficult is to teach the individual to find its prey today, tomorrow, six months from now and so on when this may require moving long distances to secure seasonally available food resources.

Then too there is the matter of physical and physiological competence to cope with the ocean in all its vagaries.

It is well known to comparative anatomists that the skeleton of animals that have grown to maturity in zoos is altered in many ways from that of an animal that has matured in the wild. Many of the skeletal changes reflect changed muscle mass the consequence of different levels of use. Little is known about changes in physiological competence accompanying the two very different lifestyles. Is a cetacean after months or years in an enclosed and protected environment

still sufficiently able as a breath-hold diver to seek its prey in long deep dives or to survive the fury of an ocean gale?

From what we know some groups of dolphins live in relatively small home ranges within protected waters that produce an adequate year round supply of food species. This makes the task of meeting their energy needs appear to be relatively simple. Individuals from these stocks would be the most likely candidates for successful release.

The orca however probably has a much more difficult task. For example, an orca in the North Atlantic must learn how to knit the seasonally fluctuating resources of large ocean areas into a year round livelihood. This is an ability usually gained by years of learning at its mother's side or as a member of a skilled and experienced pod.

The individual, after years of sheltered aquarium life, may have lost its skill at detecting and avoiding predators, if it had learned them before its capture. For orca there are probably few predators but for dolphins and beluga they are a fact of life.

The toothed whales are known to play host to a large assortment of parasites some of which can induce life threatening diseases or lead to a debilitation that renders the individual more vulnerable to other natural causes of death (St. Aubin pers. comm.). Have years of feeding on a diet free of parasites and of living with a relatively small number of cetacean contacts left the animal with little natural resistance to disease organisms?

The death of large numbers of European harbour seals in 1986, resulting from a virus similar that of the canine distemper virus, is a dramatic example of the kind of impact that could result from the release to the wild of captive animals carrying an undetected virus.

Concern for other cetacean species arises largely from the possibility that the captive animal may be a carrier of disease organisms that the wild stock has not been exposed to Relatively little is known about many of the viruses of marine mammals and it is impossible to screen a potential releasee for many of the viruses it may carry. The Committee notes particularly the major conclusion of the Workshop on Releasing Marine Mammals into the Wild (U.S. Marine Mammal Commission 1991) that, with the possible exception of highly endangered species, risks to wild populations from transmission of viral diseases from the release of rehabilitated captive animals, make such endeavours inadvisable.

The threat to humans posed by a released animal may seem slight. However, during its period in an aquarium a cetacean has learned to associate with man in many novel ways. When it is released from the aquarium back into the wild it takes these learned behaviours with it. An orca so conditioned may prove to be an apparent or actual danger to swimmers or others using the sea The insurance liability involved would be an interesting matter.

This brief catalogue of some of the complications associated with returning once captive animals to the wild does not make the possibility less interesting only more in need of carefully planned research. It is possible to imagine circumstances in which the ability to release aquarium animals might present an attractive management option in the future.

Given the potential for serious problems as well as the possible advantage, serious well planned research should be undertaken to examine the problems and see if solutions to them can be found. This should concentrate first on the species, such as the bottle-nosed dolphin, that seem to present the least complicated problems to be solved.

Experience with Release

There have been a few exploratory projects carefully designed to learn something of the problems and potential of the concept.

The Naval Ocean Systems Center in the United States has for several years experimented with the training of bottle-nosed dolphins and pilot whales to leave a facility (S. Ridgeway, pers. comm.). These studies have yielded information that could be useful in programs designed to prepare cetacea for future release to the wild.

Three pilot whales rescued from a mass stranding on the northeast coast of the United States were rehabilitated at the New England Aquarium and released bearing radiotelemetry devices (Mate et al 1987; J. Goodyear, video film).

In 1989, two bottle-nosed dolphins from Florida were returned into the parent population after two years as research animals at the University of California, Santa Cruz. These animals were given the best possible professional rehabilitation training and medical treatment prior to release. They too were equipped with radio telemetry devices (St. Aubin, pers. comm.).

In both the pilot whales and the bottle-nosed dolphins, despite some radio malfunction, it was possible to track one animal for several weeks. Though the results were encouraging maintaining contact for several months may be required before it is possible to be reasonably certain that the "return" program has been successful.

It is apparent that even with the best of design, equipment and execution the complicated process of preparing cetaceans for release, and monitoring them for the periods required to make certain that they have survived on their own is in its early stages.

The release of three dolphins from commercial facilities in the United Kingdom in 1991 (Project Into the Blue), is in a different category. It appears that the animals may have been of three different local strains or subspecies (St. Aubin, Ontario Veterinary College, pers. comm.). One was Tursiops truncatus, one a the North Pacific form Tursiops t. gilli and the third from the Indopacific. To release singletons of a subspecies into a marine region (Turks and Caicos islands) where it does not occur naturally is contrary to biological propriety.

All animals had been in captivity for a number of years and one of them is reported to have been ailing and under antibiotic treatment (Kirtland 1992). According to the same source "the entire operation was ill-conceived and poorly executed. It was little more than a publicity stunt with no concern for the welfare of the dolphins in anything other than an anthropomorphic sense."

On the other hand some of those involved reported (viva voce) to a conference in Vancouver, B.C. on October 31, 1992 that one of the animals had that day been identified at sea in company of a group of dolphins. We may never know what steps were taken to prepare these animals for release and whether or not they were successful. This is unfortunate as the issues are important and every such attempt at a release to the wild should be given the best scientific design, meticulous documentation and monitoring conducted so as to be beyond criticism.

Given the present state of knowledge, the release to the wild of cetaceans that have been in captivity for extended periods is inappropriate.

MARINE WORLD AFRICA USA

March 16, 1993

Dr. Ricardo Bastida
Mundo Marino S.A.
Avda. DECIMA No. 157
C.C. No. 6
7105 San Clemente del Tuyu
Pcia. Bs. As. - Argentina

Dear Ricardo,

I received your fax today and yes, I did receive your card with your very nice comments on our staff and park. Thank you.

In regards to what you have spoke of in your letter about your situation with your beached Killer Whale, first, you should be commended for your efforts in the rehab of this animal to this point in time, but it also sounds like you have a ways to go before he is completely rehabed. I feel it is very premature of your Governmental Agency to ask you to release this animal back into the wild. Also stated in your letter, you have the support from your Governmental Authorities, so this is the Agency you should address your situation to and look for direction and support from them. Give them all the information you can in regards to why this animal shouldn't be released now or even in the future.

To my knowledge, no Killer Whale was ever released back into the wild after it had been beached. I don't know the medical problems this animal has, but we have learned through past experience that almost all beached animals have become dependent on receiving medical treatment long term to control their medical problem. It is very difficult at times for a veteranarian to give a long term prognoses on an animal.

One of the best things I feel you did was to allow this animal to socialize with your female orca and dolphin. This paired with the fine medical treatment he has been receiving is probably the reason this animal is alive today. With the pod of whales which this animal came from is no longer in the area, I feel if this animal were to be released back into the wild, its chances of survival would be very slim. Killer Whales are very social and bonding animals within their own pods and you just don't put an animal that has medical problems in with a pod of whales that it dosn't know. This is adding insult to injury. Many times, the placed animal would be beaten up by the group and be run out to only beach again.

My professional opinion in this matter is, this whale shouldn't be released back into the wild, for if you do, I sure it will just be set free to wash up on your beaches once again and in all likelihood be found dead.

I would suggest that you get as many veterinarians to write to your Government agencies in support of not releasing this animal back to the wild. Many times these types of action has a positive impact. I would also get in touch with your local newspapers and also the children to write letters. Politicians don't like to get pressure from either party.

If I can be of further help to you, please contact me

Best of luck to you and your staff and most of all the Whale.

Sincerely,

Sonny Allen
Director of Marine Mammals
Marine World Africa USA

SA:ls

NOTARIAL TESTIMONY

TWENTY ONE – TESTIMONY – Mr. Julio Daniel Loureiro – In Santa Teresita City, Partido de La Costa, Buenos Aires Province, February eleven year 2002, before me, Nelida Noemi JAUREGUIBERRY de RACAK, Titular Notary from Register N° 1 from La Costa, presents before me: Mr. **Julio Daniel LOUREIRO,** Argentinean, married with Ms. Sara Esther Iribarren, he manifests to have Identification Document N° 8.114.151, and he also manifests that he is Veterinarian, Professional Identification from the Veterinarians College of Buenos Aires Province N° 1836, his address is in Intendente Dumm Street N° 1171 in General Lavalle City, General Lavalle, he is capable, I testify. He manifests: a) That he is licensed to practice the veterinarian medicine in the Argentina Republic; b)- That he has practiced that profession of veterinarian during 27 years continuously and uninterruptedly, being currently exercising his profession; c)- That he has worked as veterinarian in Mundo Marino SA during 23 years, and in this time he has taken care of a lot of marine mammals, including several stranded ones which Mundo Marino S.A. has rescued and rehabilitated.- He adds that some of these mammals have been released back in the wild, others have died and some of them, including the killer whale known as "KSHAMENK" have been rehabilitated. Regarding this animal, during his rehabilitation special consideration was given to the possibility of releasing it back in the wild. Basing in my experience with marine mammals, specially my knowledge in cetaceans, including killer whales, I have had concerns regarding Kshamenk releasing.- First, the uncertain regarding the possibility of illness transmission to the wild killer whales population.- Second, by the moment when the health of Kshamenk was recovered in 1995 it didn't seem viable the possibility of a successful release.- He got accustomed too much to human intervention as part of his successful rehabilitation.- As a very important fact to have in mind is that it was not a known member of a resident pod in the area, so it would have been very difficult to have a sound and successful release in the correct social group. In this way Mr. Julio Daniel Loureiro manifests, to this effect, that the present is a TESTIMONY, and he has no more information to add.- I read this to him, who ratifies all the content and sign this , before me, I testify

CERTIFICO: que la diligencia notarial correspondiente a esta fotocopia se formaliza en el folio de actuación notarial número BAA026/3003
San Fernando 11 Febrero de 2002

GAA052555671

salvaje.-Basándome en mi experiencia con mamiferos marinos, en particular mi conocimiento de los cetáceos, incluyendo las orcas, tuve varias preocupaciones con la liberación de Kshamenk.-En primer lugar, habia falta de certeza con respecto a la posible transmisión de enfermedades en la población de orcas salvajes.-En segundo lugar, para el momento en que la salud de Kshamenk se estabilizó en el año 1995 no parecía que su liberación fuese exitosa.-La mencionada Orca Kshamenk se acostumbró mucho al cuidado y/o a la intervención humana como parte necesaria del tratamiento exitoso.-Destacando como dato muy importante a tener en cuenta, la circunstancia de que ella no era miembro conocido de una población de orcas residentes, por ello hubiera sido muy dificil disponer de una liberación integra y exitosa en el grupo social correcto.-En este estado al señor Julio Daniel Loureiro manifiesta, a sus efectos, que realiza la presente con carácter de **DECLARACION JURADA**, no solicitando agregar mas datos.-LEO al compareciente quien la ratifica en su contenido y asi la otorga y firma, ante mi, doy fe.- Enmendado: Experiencia Vasa.

Julio Daniel Loureiro

Ante mi

ACTUACION NOTARIAL

8AA02613023

CONCUERDA con su matriz que pasó al folio 31 del Protocolo del corriente año del Registro UNO de La Costa, a mi cargo, doy fe.- EXPIDO el presente PRIMER TESTIMONIO para EL REQUIRENTE en fotocopia del folio de Actuación Protocolar GAA05255671 y el presente folio de Actuación Notarial número 8AA2613023 que sello y firmo en el lugar y fecha de su otorgamiento.-

CERTIFICO: que la elegislación notarial correspondiente a esta fotocopia se formaliza en el folio de actuación notarial número EAA0120494 Sesenta y Uno de Febrero de 2008

EAA01204945

CERTIFICO que el documento adjunto que consta de dos (2) - - - - - - - -
fojas que llevan mi sello y firma, es copia fiel de su original, que tengo a la vista
doy fe.- Registro número UNO del Distrito de LA COSTA.- - - -
- - - - - - - - - - - Lugar y fecha: SANTA TERESITA, once
de febrero de dos mil dos.-

NELIDA NOEMI JAUREGUIBERRY WARCAK
NOTARIA

COMMUNAUTÉ EUROPÉENNE

N° 10592°01

1

Original

1. Exportateur/réexportateur

MARINELAND COTE D'AZUR
306 AVENUE MOZART
06600 ANTIBES
France

PERMIS/CERTIFICAT

☐ IMPORTATION
☒ EXPORTATION
☐ RÉEXPORTATION

N° FR-01-006-00989 E

2. Dernier jour de validité 04/06/2002

CITES Convention sur le commerce international des espèces de flore et de faune sauvages menacées d'extinction

3. Importateur

FUN TIME INC SIX FLAGS WORLDS OF ADVENTURE 1060 N AURORA ROAD
AURORA OHIO 44202
USA

4. Pays (ré)exportateur

France

5. Pays importateur

USA

6. Emplacement autorisé des spécimens vivants des espèces inscrites à l'annexe A, prélevés dans leur milieu naturel

7. Autorité de délivrance

Ministère de l'Environnement
Direction Régionale PACA
Le Tholonet BP 120
13603 AIX EN PROVENCE CEDEX 01

8. Description des spécimens (marques, sexe/date de naissance des animaux vivants)

1 ORQUE FEMELLE NEE EN CAPTIVITE LE 25/02/93 AU MARINELAND COTE D'AZUR
LONGUEUR: 4.60 m
POIDS: 1500 KG

LIV

9. Masse nette (kg)

10. Quantité 1

11. Annexe CITES	12. Annexe CE	13. Origine	14. Objet
II	A	C	Z

15. Pays d'origine

France

16. Numéro du permis

17. Date de délivrance

18. Pays de dernière réexportation

19. Numéro du certificat

20. Date de délivrance

21. Nom scientifique de l'espèce

ORCINUS ORCA

22. Nom commun de l'espèce

ORQUE

23. Conditions spéciales

Ce permis/certificat n'est valable que si les animaux vivants sont transportés conformément aux lignes directrices de la CITES en matière de transport et de préparation à l'envoi d'animaux sauvages vivants ou, en cas de transport aérien, conformément à la réglementation sur les animaux vivants publiée par l'IATA (Association du transport aérien international)

24. La documentation de (ré)exportation délivrée par le pays de (ré)exportation
☒ a été présentée à l'autorité de délivrance
☐ doit être présentée au bureau de douane frontalier d'introduction

25. ☐ L'importation ☒ L'exportation ☐ La réexportation des marchandises décrites ci-dessus est autorisée.

Signature et cachet officiel

Michel TESTARD, Adjoint au Directeur,
pour le préfet et par délégation

Nom du fonctionnaire chargé de la délivrance

Lieu et date de délivrance
Aix en Provence, 04/12/2001

26. Numéro du connaissement/de la lettre de transport aérien

27. Réservé à la douane

Signature et cachet officiel

Quantité/masse nette (kg) réellement importée	Nombre d'animaux morts à l'arrivée

Document douanier
Type
Numéro
Date

43 76 40 L

EUROPEAN COMMUNITY

No.10592.01

1. Exporter / re-exporter MARINELAND COTE D'AZUR 306 AVENUE MOZART 06600 ANTIBES France	**PERMIT/CERTIFICATE** No.FR-01-006-00989E ☐ IMPORT ☒ EXPORT 2. Last day of validity 06 / 04 /2002 ☐ RE-EXPORT
3. Importer FUN TIME INC SIX FLAGS WORLDS OF ADVENTURE 1060 N AURORA ROAD AURORA, OHIO 40202 USA	**CITES** **Convention on International Trade in Endangered Species of Wild Fauna and Flora**
	4. Exporting (re-exporting) Country **France**
	5. Importing Country **USA**
6. Authorized location of live specimens of species listed in Appendix A and taken from their natural environment	7. Issuing Authority Ministère de l'Environnement Direction Régionale PACA (Provence Alpes Côte d'Azur) Le Tholonet BP120 13603 AIX EN PROVENCE CEDEX 01
8 Description of specimens (marks, sex / date of birth of live animals) 1 FEMALE KILLER WHALE BORN IN CAPTIVITY ON 25/02/93 AT MARINELAND COTE D'AZUR LENGTH: 4.60 m WEIGHT: 1500 KG	9. Net Mass (Kg) 10. Quantity 1
	11. App. CITES 12. App. CE 13.Origin 14. Object II A C Z
	15 Country of Origin France
	16. Permit Number 17. Date of Issue
	18. Country of previous re-export
	19. Certificate Number 20. Date of Issue

21. Scientific name of the species

ORCINUS ORCA

22. Common name of species

KILLER WHALE

23. Special Conditions

This permit/certificate is only valid if the live animals are transported according to CITES guidelines regarding transportation and preparation for dispatch of live wild animals or, in case of air transportation, according to regulations on live animals published by IATA (International Air Transport Association).

24. Export (re-export) documents issued by the country of export (re-export)

☒ Have been submitted to the issuing authority

☐ Must be submitted to the border Customs Office

25. ☐ Import ☒ Export ☐ Re-export of the goods described above is permitted.

Signature and Official Stamp
Michel TESTARD, Deputy Director
for the Prefect and on his authority

Name of the Issuing Officer

26. Bill of Lading/Airway Bill Number

Place and date of Issue
Aix en Provence on 12 / 04 / 2001

27. For Customs use only

Signature and official stamp

Quantity/Net mass (kg) actually imported	Number of dead animals on arrival	Customs Document Type Number Date

Prepared by Multinational Translating Service, NY
Translated from a copy on December 7, 2001
By Ms. Régine McCullough, Translator ID# 1068
Certification Attached

Multinational Translating Svc.
928 Connetquot Avenue
Central Islip, NY 11722

"In any language, communication is our business"

CERTIFICATION

This is to certify that the information in the attached translated document, Permit for the Exportation of a Killer Whale, dated December 4, 2001, is true and correct. The document was translated from French to English on December 7, 2001, by Ms. Régine McCullough, Translator ID# 1068. Ms. McCullough is fluent in French and English, and is a registered translator and interpreter with Multinational Translating Service.

Signed: Lisa Alesci

Lisa Alesci, Partner
Multinational Translating Service, NY

County of Suffolk)
SS:
State of New York)

Sworn to before me this 4th day of February, 2002

Notary Public: LPC

LEONARD P. CORAZZA
Notary Public, State of New York
No. 24-4835856
Qualified in Kings County
Commission Expires 2-28-200

My Commission Expires:

Phone: 631-581-8956 - Toll-free: 877-442-1743 - Fax: 631-224-9435
E-mail: mtsvc@optonline.net - URL: www.mtsvc.qpg.com

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FAX 530.243.8898
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November 26, 2001

Mr. G. William Hughes, Zoological Director
Six Flags Worlds of Adventure
1060 N. Aurora Road
Aurora, OH 44202

Dear Bill:

I wished, as co-chair of the American Zoo and Aquarium Association's (AZA) Marine Mammal Taxon Advisory Group (MM TAG), to share a few thoughts with you concerning your proposed importation of a male killer whale from Argentine.

As you know, although the United States National Marine Fisheries Service implements and oversees the Marine Mammal Protection Act, they do not regulate, approve or comment on breeding programs. They oversee the care, live collection, importation and transfer of marine mammals under the sole category of Public Display, as described within the Marine Mammal Protection Act. In other words, they do not comment on the scientific basis of breeding programs or the need for or against importation of a marine mammal for breeding.

The only organization that oversees the cooperative breeding of marine mammals within United States zoological facilities is the AZA MM TAG. As a member of this group's Steering Committee, you are aware that this group meets annually, has regular conference calls and approves the transfer of marine mammals within North American facilities for breeding. Endorsement of breeding programs by the Steering Committee constitutes endorsement of the programs by AZA and, thus, is the only endorsement possible by any scientific or regulatory body in the United States.

I am writing this letter to you in my capacity of Co-Chair and, in so doing, am endorsing the importation of this male killer whale on behalf of the AZA MM TAG.

I wish to share a few of the reasons why this importation is important.

The importation of this animal is of foremost importance to further marine conservation education. Nearly two million visitors will have the opportunity to see this animal and will be inspired concerning conservation of the marine environment. This is vitally important as man's impact upon the marine environment is growing as our population grows. Less than 7 % of the world's oceans surface receives any protection today. Unless our visitors are inspired to care about the marine environment and are more respectful, our deleterious impact upon the oceans will continue to increase.

Secondly, we know very little concerning the physiology of southern stock killer whales. Are they physiologically different than northern stock killer whales? Are southern stock killer whales affected by other disease processes than their northern counterparts? Routine preventive medicine examinations at Six Flags Worlds of Adventure will help answer these and other questions. These studies may yield information that may help us understand and manage the wild population in the southern hemisphere.

Third, we know little concerning the genetic composition of southern stock killer whales. How does the genetic diversity of the southern stock compare with the northern stock? What is the degree of genetic difference between the southern and northern populations? Analysis of routine clinical samples from this animal will add significantly to our base of knowledge and will begin to answer these questions.

Fourth, the presence of this animal in the northern hemisphere may serve as a genetic repository of southern population killer whale genetic material. Semen may be harvested from this male killer whale as a part of pioneering research in the United States. This semen can be someday sent to

impregnate killer whales all over the world, increasing the genetic diversity of the zoological population. Semen can be stored and used to inseminate females long after this animal has lived out his lifespan.

Fifth, his participation in a breeding program in the United States will increase the genetic diversity in the zoological population throughout the world. Our understanding of genetic implications suggests that this will lead to greater long term survival of killer whales within zoological environments.

Sixth, his participation will lead to the development and sharing of new scientific information concerning killer whales that will be shared with scientists and others in Argentina. This will produce a cooperative effort in which citizens of both countries benefit in our shared effort to conserve the marine environment.

Seventh, there are no other killer whales in Argentina's zoological environments. As a result, this male currently can not live with one of his own species. He is just entering breeding age and does not currently have the companionship of a female of his species. The only way such a female could reach him is if she stranded, survived, and was of approximately the same age as he is. It is more likely that a calf might strand and by the time she reached appropriate age for breeding, the best years of this male's life would be gone. Alternatively, a male might strand and, again, deny him companionship for breeding

Lastly, if he enters a breeding program in the United States and produces offspring there is the potential that a portion of his offspring will return to Argentina. In returning to Argentina, they will serve as ambassadors for their species and the marine environment and will enrich the lives of the citizens of Argentina.

On behalf of the AZA MM TAG, I strongly endorse the transfer of the male killer whale from Mundo Marina in San Clemente, Buenos Aires, Argentina to Six Flags Worlds of Adventure, Aurora, Ohio, United States of America.

It is the very best thing for this individual animal.

Thank you for your consideration.

Sincerely,



Brian E. Joseph, DVM
Co-Chair American Zoo and Aquarium Association, Marine Mammal Taxon Advisory Group

Multinational Translating Svc.
928 Connetquot Avenue
Central Islip, NY 11722

"In any language, communication is our business"

CERTIFICATION

This is to certify that the information in the attached translated document, Letter from Dr. Lorenzo von Fursen to Mr. Ricardo Mendez, dated in Nuemberg on November 11, 2001, is true and correct. The document was translated from Spanish to English on November 27, 2001, by Mr. Eduardo Zaldibar, Translator ID# 1066. Mr. Zaldibar is fluent in Spanish and English, and is a registered translator and interpreter with Multinational Translating Service.

Signed: Lisa Alesci

Lisa Alesci, Partner
Multinational Translating Service, NY

County of Suffolk)
SS:
State of New York)

Sworn to before me this 4th day of February, 2002

Notary Public: _____

LEONARD P. CORAZZA
Notary Public, State of New York
No. 24-4835856
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My Commission Expires: _____

Phone: 631-581-8956 - Toll-free: 877-442-1743 - Fax: 631-224-9435
E-mail: mtsvc@optonline.net - URL: www.mtsvc.qpg.com

Dr. Lorenzo von Fursen
TIERGARTEN NUERNBERG
Am Tiergarten 30
90480 NUERNBERG
Germany

MUNDO MARINO
Mr. Ricardo Mendez
San Clemente del Tuyu
Prov. De Buenos Aires
Argentina

Nuernberg, November 11, 2001

Dear Mr. Mendez:

By this I want you to know my opinion regarding the possible transfer of your Orca, Kshamenk to the Six Flags of America dolphin site, in United States.

When an institution dedicated to the handling of animals has to decide whether to move animals, it is very important to consider the well being of the animal above all else. If we apply this rule to the situation with Kshamenk, I consider that Mundo Marino has demonstrated that it is capable of providing a good place for this animal. The successful pregnancy of Belen, the optimal socialization with the dolphins and the good work of the animal with the trainers, show that Mundo Marino has reached a good level in the handling of marine mammals.

But considering the actual situation of the animal, and evaluation of its future possibilities, two aspects should be highlighted which are intimately interrelated and which deserve special attention.

The first aspect is the social environment of Kshamenk. In spite of the fact that this animal has demonstrated good social aptitudes when it was recently socialized with dolphins, it would be better for Kshamenk to be in the future among individuals of its own species. Orcas are social species and their psychological and physical welfare in captivity and the specific development and behavioral performance of the species depends upon, among other factors, the social interactions with other animals of their same species. Since it was very difficult for Mundo Marino to get individuals from other aquaria to socialize with Kshamenk, I suggest the only alternative is the transfer of this animal to another aquarium. The second aspect, which needs to be addressed, is related with the possibility of participating in reproduction programs. The evolution and development of modern zoos has demonstrated that wild animal handling not only ensures their psychological and physical welfare, but that the establishment of a self-supporting population is equally important. By means of coordinated reproduction programs, which in many cases required the relocation of animals from one institution to another, today great progress has been achieved. For instance, in some species, such as the case of the golden monkey from Brazil, individuals born in captivity were successfully used to ensure the survival of the natural population.

In the case of Kshamenk, it is important to highlight that this individual has a special value, since it has proven to be a fertile male and with good social aptitudes which render it as a good male reproducer. To this we must add its age, which at 10 marks the start of its reproductive phase. Experience has demonstrated that in many cetacean species, not all of the individuals are potentially reproductive. The strategy of the majority of the institutions, which have individuals with good reproductive potential, such as in the case of Kshamenk, is to do all they can to keep these individuals participating in reproduction programs.

Both mentioned aspects, the possibility of socialization with individuals of their kind and the possibility that Kshamenk can reproduce are enough grounds to clearly warrant the transfer of the animal Kshamenk to the Six Flags USA aquarium.
It is important to emphasize the fact that the other two participating organizations in this coordinated reproduction program, SIX FLAGS, Ohio and MARINELAND, France, have considerable experience in the handling and reproduction of captive Orcas.
Best regards

Prepared by Multinational Translating Service, NY
Translated from a copy on November 27, 2001
By: Mr. Eduardo Zaldibar, Translator ID# 1066
Certification Attached

Killer whales in the waters of Argentina

Regarding the Status of killer whale population in Argentina, it is worth to mention that up to now there are not institutions or scientific groups that have performed a general census of this species. That's why caution must be taken and not to use this variable in subjects related with Kshamenk. Currently, there is not any specialist in marine mammals that can give a number regarding the quantity of killer whales that habit this South Atlantic area

The only pod of killer whales about which there is information regarding the number of individuals, identification and trophic behavior is the one found in Peninsula Valdés, north of Patagonia. This group has about 25 individuals. The information about this specie in other coastal areas and on the marine platform is circumstantial and doesn't respond to the concept of census. However it is very clear that exist several pods in such a large area, but it is impossible to give the number of all individuals in the region.

It is also worth to mention that during the sightings in off-shore areas, in coastal areas and in stranded animals found in Buenos Aires province, no dorsal fins have been observed that correspond to the individuals of Peninsula Valdés. Because of this, to assume that the killer whale population in Argentina is restricted exclusively to those specimens found in Peninsula Valdés is not real.

Only in two opportunities it has been recorded, in the south of Buenos Aires Province, specimens from peninsula Valdés (Miguel Iñiguez "Status of conservation of the Sub western Atlantic marine mammals" Report PNUMA 138: 92-95; Mar del Plata Aquarium Foundation, communication)

If we consider the sightings references from oceanographic ships performed by scientists, both on the continental platform and in sub-Antarctic and Antarctic areas near Argentina, we can estimate that the general stock in such an extensive area can ascend to several hundreds or even more animals.

In these uncertain estimations it is worth to consider the trophic potential of the area regarding the requirements of these maximum predators of the marine ecosystem. Regarding this, the principal food items of this species in the South Atlantic (marine mammals, penguins, fishes and squid) are most developed than in any other part of the Southern Hemisphere, so the trophic resources of this area would not be a limiting factor to prevent this specie to reach its maximum possibilities of population development. (Todd, Frank; Rodriguez, Diego; Bastida,Ricardo; Moron, Sergio; Favero, Marco; Silva, Patricia, personnal communication; Bastida and Lichtschein, 1984; Informes Anuales de Cruceros de Evaluación de Cetáceos en áreas Subantárticas y Antárticas de la International Whaling Comisión, 1980-2000)

As mentioned before, most scientific knowledge about killer whales in Argentina is referred basically to a group or pod formed by about 25 specimens perfectly identified that lives in North Patagonia, especially in the area of "Peninsula Valdés"

In this area, the animals have developed the behavior of beaching themselves intentionally in order to catch pinnipeds. This intentional beaching is possible because it is performed during high tide (the area has an inter tidal difference of six meters) and on a pebbles beach, with a pronounced sloping. This last characteristic, together with the plasticity of the soil is what permits the animals to free themselves without problems and to return to the sea. This phenomenon of intentional beaching of killer whales has not been observed in any other part of the Argentinean coast, and there are also no records of this behavior in Valdés before the decade of '50, so it is suspected that this is a recently acquired behavior in this area, and transmitted from one generation to other.

The numerous strandings of killer whales registered in other areas of the Argentinean coastline are not intentional, and that's why in most of them the animals died (see attachment 5)

This situations are mostly aggravated in certain areas like the Samborombón Bay, characterized by the shallow waters, with sand banks that displace continuously, and the concentration of many species of fishes that in turn attract many species of pinnipeds and cetaceans.

Six Flags WORLDS ADVENTURE
Wildlife. Wild Rides.

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(330) 562-7131 • Fax (330) 562-7020
www.sixflags.com

February 5, 2002

Ann D. Terbush, Chief
Permits, Conservation and Education Division
Office of Protected Resources
National Marine Fisheries Services
1315 East-West Highway, Room 13705
Silver Spring, MD 20910-3226

Re: Funtime, Inc. d/b/a Six Flags Worlds of Adventure ("Six Flags")
Marine Mammal Import Permit Application
File No. 1004-1656 (the "Application")

Dear Ms Terbush:

This letter is in reference to the request for additional information concerning the import permit application submitted by Six Flags Worlds of Adventure. As stated in my letters that accompanied the application, I am a licensed veterinarian in the state of Ohio and have experience and knowledge in the field of marine mammal medicine and care.

Several veterinarians that have experience with killer whales have reviewed the medical information from both animals. We will continue to monitor these animals via faxed blood work and on site visits. All recommended testing in accordance with professionally accepted standards will be completed prior to the transport.

All aspects of the transport have been established and reviewed and will provide adequate care for the well being of the animals. There is a long and successful history of transporting marine mammals using the techniques that were described in the application and in the additional information provided to the agency. The transport of the animals will be staggered.

A written plan for the acclimation of the animals to their new environment as well as to each other has been developed. This plan includes having staff from each originating institution accompany the animals to Six Flags Worlds of Adventure and assist with their acclimation. Our facility is designed so that each animal will be isolated from each other

until they are acclimated to their new environment and then the acclimation to each other will take place. As I am sure that each animal will progress at a different pace, therefore we can not put a time frame on the acclimation process.

There will be no other animals in the facility that will house the killer whales. This facility has undergone a complete coating rehab over the past three months.

Sincerely,

Tobi Pledger

Tobi Pledger, DVM
Staff Veterinarian

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PORTLAND, OREGON 97204-3141
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May 8, 2002



VIA FACSIMILE (301) 713-0376 and MAIL

Mr. Eugene Nitta, Acting Chief
Permits, Conservation and Education Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, Maryland 20910

Re: Funtime, Inc. d/b/a Six Flags Worlds of Adventure
Marine Mammal Import Permit Application
File No. 1004-1656

Dear Mr. Nitta:

This is to submit the annexed document from the Argentine Ministry of Social Development, together with a certified English translation, for inclusion within the above-referenced Application docket.

Thank you for your time and consideration.

Very truly yours,

Eldon V.C. Greenberg

Enclosures

cc: Dan Hytrek, Esq.

Ministerio de Desarrollo Social

MINISTERIO DE DESARROLLO SOCIAL Y MEDIO AMBIENTE FOLIO 224

Expte. Nº 70-01150/2001
Ex SECRETARÍA DE DESARROLLO SUSTENTABLE Y POLÍTICA AMBIENTAL

BUENOS AIRES, 19 ABR 2002

SEÑOR ING. OCTAVIO PÉREZ PARDO, A CARGO DE LA DIRECCIÓN NACIONAL DE DESARROLLO SUSTENTABLE:

En su providencia precedente (v. fs. 222), usted solicita al servicio permanente de asesoramiento jurídico que *se expida sobre el pedido formulado*, en el expediente, *por el Oceanario Mundo Marino*.

-I-

1. Ese pedido del oceanario citado consiste en solicitar a la Autoridad de Aplicación del Reglamento Nacional de Oceanarios el *otorgamiento de las autorizaciones necesarias para dar cumplimiento al convenio de reproducción de orcas* acompañado a su solicitud, sobre la base de antecedentes, consideraciones y circunstancias que se exponen en su escrito (v. fs. 3 y ss.).

En virtud de ese convenio, el oceanario en cuestión ha pactado con otro de Estados Unidos de Norte América un préstamo de un ejemplar de orca que aquél posee desde el año 1992 -a saber, la orca Kshamenk-, procedente de un varamiento (v. ficha técnica agregada a fs. 11), a los fines de vincularlo con otro ejemplar de sexo femenino de

la especie, con miras a su reproducción. De cada tres crías nuevas, una será entregada al OCEANARIO MUNDO MARINO, al cual, además, deberá ser devuelto el ejemplar mucho reproductor. Léase el texto íntegro del contrato, obrante, en traducción legalizada, a fojas 154 y siguientes.

La solicitud del OCEANARIO MUNDO MARINO fue presentada el día 26 de diciembre de 2001 (v. fs. 7).

2. Durante el trámite a que dio lugar la solicitud reseñada en el parágrafo precedente, se presentó la FUNDACIÓN TIERRA SALVAJE solicitando, mediante escrito fundado de 6 de marzo de 2002 (v. fs. 160 y ss.), que la DIRECCIÓN DE RECURSOS ICTÍCOLAS Y ACUÍCOLAS se abstuviera de otorgar las autorizaciones que fueran requeridas por el OCEANARIO MUNDO MARINO en orden a la concreción de su plan de reproducción convenido con un oceanario norteamericano; y que procediera a exigir la modificación de ciertas cláusulas del convenio entre ese oceanario y su contraparte norteamericana.

Los principales óbices al plan de reproducción de que se trata y su correspondiente convenio, planteados por la fundación ecologista aludida, son los siguientes: i) el traslado del macho reproductor hacia los Estados Unidos es altamente riesgoso para su vida; ii) el ejemplar reproductor, en posesión del OCEANARIO MUNDO MARINO, es un bien o recurso natural federal, del dominio público del Estado, de modo que ni el ejemplar reproductor es del OCEANARIO MUNDO MARINO -no pudiendo éste, por ende, disponer del animal del modo como lo solicita-, ni tampoco podrían serlo las crías que pudieran corresponderle a resultas del convenio celebrado con el oceanario

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norteamericano. Son nulas las cláusulas del convenio suscripto por el OCEANARIO MUNDO MARINO donde éste invoca la propiedad del macho reproductor y se reserva la de las eventuales crías que pudieran corresponderle.

3. Por último, corresponde reseñar que en escrito que luce agregado a fojas 215, el apoderado del OCEANARIO MUNDO MARINO ha requerido el pronto despacho de las actuaciones administrativas, en las que se halla pendiente el otorgamiento de las autorizaciones oportunamente solicitadas por su representada.

-II-

1. De acuerdo con el artículo 8º del Reglamento para Establecimientos que Albergan Mamíferos Marinos, Resolución de la ex SECRETARÍA DE RECURSOS NATURALES Y AMBIENTE HUMANO DE LA PRESIDENCIA DE LA NACIÓN Nº 351 de 18 de septiembre de 1995 -también conocido como "Reglamento de Oceanarios"-, *en el caso de que un oceanario desarrolle un programa de reproducción de mamíferos marinos, éste deberá contar con al aprobación de la Autoridad de Aplicación*.

Cabe indicar que la autoridad de aplicación del Reglamento de Oceanarios es la SECRETARÍA DE AMBIENTE Y DESARROLLO SUSTENTABLE, a través de su DIRECCIÓN DE RECURSOS ICTÍCOLAS Y ACUÍCOLAS (v. art. 4º, parte dispositiva, Resol. ex SRNyAH Nº 351 de 18/9/95).

Para el caso de que, como sucede en el expediente, el programa de reproducción implique el desplazamiento de un ejemplar reproductor a otro país, resultan de aplicación

las previsiones del Reglamento de Oceanarios concernientes a exportaciones, aun cuando se trate de una exportación o transferencia transitoria del animal a otro oceanario del extranjero. Los requisitos que debe cumplimentar el oceanario interesado en que se le apruebe la exportación o traslado transitorio de un animal en él alberqado están prescriptos en el artículo 17, inciso c), del Reglamento de Oceanarios. Ellos son: *documentación CITES y documentación aduanera; y ficha técnica individual del animal*, la cual debe incluir diversidad de datos relevantes. Tales recaudos, además, deben complementarse con los exigibles en materia de transporte, regulados en los artículos 38 y siguientes del Reglamento de Oceanarios.

2. A la luz de las normas precedentemente reseñadas, la solicitud en trámite del OCEANARIO MUNDO MARINO debe ser considerada y resuelta como una solicitud de aprobación de un programa de reproducción, en los términos del artículo 8° del reglamento de aplicación al caso.

Si existen razones científicas y de conveniencia a la luz de la política que, en materia de programas de reproducción, tiene la Autoridad de Aplicación del Reglamento de Oceanarios, sobre cuya base pueda considerarse susceptible de aprobación el programa de reproducción en cuestión, este servicio permanente de asesoramiento jurídico debe señalar que, no obstante la presentación efectuada por la FUNDACIÓN TIERRA SALVAJE, no se advierten óbices jurídicos para esa aprobación.

Esa ausencia de obstáculos jurídicos se debe, fundamentalmente, a que, en primer lugar, el riesgo inherente al transporte de mamíferos marinos no es un

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obstáculo para la realización del mismo; siempre que se cumplan los recaudos de preservación y seguridad previstos en la reglamentación (v. arts. 38 a 40 del Reglamento de Oceanarios). Demás está decir que al servicio permanente de asesoramiento jurídico no le corresponde efectuar la auditoría técnica de esos requisitos.

En segundo lugar, los mamíferos marinos, lo mismo que los peces y los restantes llamados "frutos del mar" son, desde el punto de vista legal, *res nullius*; por eso el Código (Civil, cabe aclarar) *dispone que pueden ser adquiridos por ocupación (artículos 2343 inciso 1°, 2527 y 2547). Va de suyo que si los peces -y también los mamíferos marinos- son "res nullius", son cosas "privadas", pues de lo contrario su dominio no podría ser válidamente adquirido por apropiación. El carácter público de las aguas en nada obsta al carácter privado de los peces* -y de los mamíferos marinos que las pueblan, igual que los peces-, *pues no todos los frutos de las cosas públicas son públicos, sino únicamente aquéllos que contribuyen en algún modo al cumplimiento del destino dado a la cosa pública y en función del cual ésta fue puesta fuera de comercio* (v. Miguel S. MARIENHOFF, "Tratado de Derecho Administrativo", t. VI, pág. 767, Abeledo Perrot, Buenos Aires, 1996). De modo que el argumento de la fundación que se opone a la aprobación del programa de reproducción del OCEANARIO MUNDO MARINO, fundada en la naturaleza jurídica de bien del dominio público "federal" de la orca macho reproductora de que se trata, es erróneo. Es cierto que el Reglamento de Oceanarios prevé que, recogido un mamífero marino varado, en principio, su posesión por el oceanario es transitoria, al sólo efecto de la rehabilitación y su posterior

liberación al océano. Sin embargo, ese principio no es absoluto, toda vez que el reglamento citado prevé programas de educación, investigación y reproducción que presuponen la permanencia del animal en el oceanario que lo alberga, bajo aprobación y control de la autoridad de aplicación.

Cabe aclarar que la apropiación y posesión de los mamíferos marinos no presupone automáticamente la adquisición de su propiedad, pues la apropiación y la posesión, en la especie, no pueden valer, sin más, título de propiedad, ante la facultad permanente que posee la autoridad de aplicación para disponer la liberación del animal al océano.

De todas maneras, las cláusulas contenidas en el convenio celebrado por el OCEANARIO MUNDO MARINO con su contraparte norteamericana, que aluden a la propiedad de ese oceanario sobre la orca macho de que se trata o sobre algunas de sus eventuales crías, son cláusulas que deben considerarse irrelevantes a los fines de la procedencia de la aprobación del programa de reproducción; por lo tanto ellas no generan derechos ante la Autoridad de Aplicación del Reglamento de Oceanarios -que sólo se limita a aprobar el programa de reproducción, pero que no procede a reconocer propiedad alguna- y son sólo oponibles a la contraparte, en la dinámica de la relación contractual en cuestión.

3. En definitiva: si el Director de Recursos Ictícolas y Acuícolas considerase que el Oceanario interesado ha cumplimentado todos los recaudos científicos y técnicos que prevé el Reglamento de Oceanarios para la aprobación de su programa de reproducción, incluida la

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autorización del transporte y la exportación transitoria del animal reproductor, no se advierten óbices jurídicos para obstar a ello. La medida deberá instrumentarse a través de una disposición directorial donde, sobre la base de las consideraciones de este dictamen, se rechace, además, lo peticionado por la FUNDACIÓN TIERRA SALVAJE, a la cual, en orden a la satisfacción de su derecho al debido proceso adjetivo, deberá notificársele también la medida.

4. Queda por resolver lo atinente al pedido de pronto despacho de las actuaciones administrativas efectuado por el OCEANARIO MUNDO MARINO. Como ese pedido de pronto despacho es procedente según la Ley Nacional de Procedimiento Administrativo Nº 19.549 (v. art. 10), la medida sugerida en el parágrafo precedente deberá ser dictada y notificada a la parte interesada dentro de un término de treinta días hábiles administrativos a contar desde el día siguiente a la presentación del pedido de pronto despacho.

E.R.A.

DICTAMEN Nº: 47618

Dr. [illegible]

CARLOS F. CANEPA
Director General
Dirección General de Asuntos Jurídicos
Ministerio de Desarrollo Social

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CERTIFICATE OF ACCURACY

Mercedes Rosch, being duly sworn deposes and says:

I hereby certify that the annexed hereto document is a true, accurate and complete translation into English from Spanish of the document *described below. I have done this to the best of my ability and belief and in full conformity with the original, copy or electronically transmitted document provided by the interested party.

* Legal Opinion issued in Buenos Aires, Argentina.

For the contents of the annexed document I assume no responsibility.

Mercedes Rosch, Translator
ATA Member No. 226908

STATE OF NEW YORK - COUNTY OF SUFFOLK

SWORN BEFORE ME THIS 5th DAY OF May 2002

NOTARY PUBLIC

DARLENE ROSCH
Notary Public, State of New York
No. 02RO6037120
Qualified in Suffolk County
Commission Expires: February 14, 2006

Translation from the Spanish

Emblem
Ministry of Social Development

Docket No. 70-03350/2001
Ex SECRETARY OF DEVELOPMENT
AND ENVIRONMENTAL SUPPORT

Buenos Aires, April 18, 2002

Mr. Octavio Perez Pardo, Engineer
Director of the National Resources Development

In your correct judgment (pages 222), you petition for, from the permanent service of legal assessment, to rule over the petition presented, on the record, by the Oceanarium Sea World.

-I-

1. That the petition from the aforementioned oceanarium consists of a request to the Authorities that Regulate the National Oceanarium *to grant the necessary authorization so it may comply with an agreement* (annexed to the petition) *for the reproduction of Orca whales,* and it is based on the antecedents, considerations and circumstances thereto written (see pages 3 and following).

By virtue of that agreement, the oceanarium in question has contracted with another in the United States of North America to lend a specimen of Orca that the latter possessed since 1992 - albeit - the Orca named Kahamenk, that was stranded (see Technical Form added to page 11), to link him with a female specimen for breeding purposes. The oceanarium Sea World will receive out of every three new litters, one specimen, to whom, the male breeder shall also

be returned. Read the complete contract in force, a legal translation, pages 154 and following.

The solicitation from the oceanarium Sea World was presented on the 26 of December 2001 (see page 7).

2. During the proceedings that gave way to the petition outlined in the preceding paragraph, the WILD EARTH FOUNDATION, was present petitioning, by means of a written report dated 6 of March 2002 (see pages 160 and following), that the Director of Etiologic and Aquatic Resources abstain from issuing the authorization required by OCEANARIUM SEA WORLD to bring into fruition its reproduction plan as agreed with a North American Oceanarium; and to demand the modification of certain clauses in that agreement between the oceanarium and its North American counterpart.

The main objection to the reproduction plan and its corresponding agreement, that can be outlined, as presented by the aforementioned ecological foundation, are the following: 1) the transfer of the male breeder to the United States represents a high risk to his life (i) the specimen breeder, in the possession of Sea World Oceanarium is an asset or federal natural resource, of public domain of the State, therefore, SEA WORLD OCEANARIUM does not have ownership of the breeding specimen - therefore it cannot - avail itself of the animal in the manner it is soliciting, nor any eventual litter that may be entitled as a result of the signed agreement with the North American Oceanarium. The clauses within the agreement signed by SEA WORLD OCEANARIUM whereby it invokes ownership of the breeding male and reserve right to the eventual litter that could be entitled to, are null.

3. Finally, it should be outlined here, the brief added to page 215, whereby Sea World's attorney has petitioned the prompt resolution of the administrative procedures, where a petition for the required authorization is pending.

-II-

1. Pursuant to Article 8, of the Law for facilities that house marine mammals, Resolution from the Undersecretary of Natural Environment and Human Resources, THE PRESIDENCY OF THE NATION No. 351 of the 18 of September 1995- also known as- "Oceanarium Law"- *in the event an oceanarium develops a reproduction program of marine mammals, the latter must have the approval of the Enforcement Authority*.

It should be noted; the enforcement authority of the Oceanarium Law is the SECRETARY OF NATIONAL RESOURCES DEVELOPMENT, through the Etiologic and Aquatic Resources (see Art. 4, disposition, Resolution ex SRNyAH No. 351 of 9/18/95.)

In the event that, as it happens in this action, the reproduction program implies a journey of the breeding specimen to another country, the enforcement provisions are those in the Oceanarium Laws relating to exports, even when dealing with an export or a temporary transfer of the animal to a foreign oceanarium. The lodging requirements that must be complied by the interested oceanarium pursuing the export approval or the temporary transfer of the animal; are detailed on Art. 17 incise c, of the Oceanarium Law. These are: *CITES and customs documentation, Individual Technical Report of the animal, which must include diverse*

relevant data. Those considerations, must also be completed with the requirements regarding transport, regulated by Articles 38 and following of the Oceanarium Law.

2. Considering the previously outlined specifications, the petition by Oceanarium Sea World now in process must be considered and resolved as petition for the approval of a breeding program, in terms of Article 8, from the law applicable to this case.

If there are scientific reasons and conveniences that come to light as it relate to the policy, in the matter of reproduction programs, that has the Enforcement Authority of the Oceanarium Law, over whose condition it could be considered susceptible the approval of the reproduction program in question, this permanent service of legal assessment must outlined that, the presentation made by the Wild Earth Foundation, nevertheless, does not notice any legal obstacles for that approval.

That absence of legal obstacles is due basically, in the first place, that the inherent risk in the transport of marine mammals is not an obstacle to carry it out as long as the protection and security outlined in the regulations are complied with. (Articles 38 and 40 Oceanarium Law) Furthermore, let it be noted, it is not the duty of the permanent service of legal assessment to perform the technical audit of those requirements.

In the second place, the marine mammals, the same as fish and the rest called "fruits of the sea" are, from a legal point of view, res nullius; *therefore the Code (Civil- it must be noted) determines that they can be acquired by occupation (Articles 2343, incise 1, 2527 and 2547). Therefore, if the fishes and the marine mammals- are "res nullius," they are "private" things; otherwise their domain*

could not be legally acquired by appropriation. The public characteristic of the waters does not in any way impede the private characteristic of the fishes- and the marine mammals that inhabit them, the same as the fishes, because not all the fruits of the public things, are public, but only those that contribute in some way to the fulfillment of the destiny given the public things and the function for which it was placed out of circulation (see Miguel S. MARIENHOFF, "Administrative Law Treaty", t. VI, page 767, Abelado Perrot, Buenos Aires, 1996.) Therefore, the fundamental argument opposing the approval of the reproduction program of Oceanarium Sea World, based on the legal nature of public domain "federal" asset of the male Orca in question, is erroneous. It is true that the Oceanarium Law provides that a rescued stranded marine mammal, in principle, its possession by the oceanarium is temporary, and simply for the purpose of rehabilitation and subsequent release into the ocean. Nonetheless, that principle is not absolute every instance that said law provides for educational, research and reproduction programs, which presuppose the permanency of the animal in the oceanarium that housed it, under the approval and control of the enforcement authority.

It is worth mentioning here, that the appropriation and possession of marine mammals does not automatically presuppose its ownership, because the appropriation and possession of the specimen cannot have any value without "title of ownership", before the permanent power the enforcement authority has to release the animal to the ocean.

Nonetheless, the clauses in the agreement made by OCEANARIUM SEA WORLD with its North American counterpart, that mentioned ownership of the male Orca or some of its eventual litter by the oceanarium in this action, are clauses

that should be considered irrelevant for the purpose of this proceeding and the approval of the reproduction program; therefore, they do not generate any rights before the Enforcement Authority of the Oceanarium Law- that it is only limited to approve the reproduction program, but does not recognize any ownership- and is only against the counterpart, in the dynamic contractual relationship in question.

3. In conclusion: if the Director of Etiologic and Aquatic Resources has determined that the interested oceanarium has complied with all the scientific and technical protection as prescribed by the Oceanarium Law, for the approval of a reproduction program, including the transport and temporary export of the breeding animal, there are no legal impediment to prevent it. The measure shall be implemented by executive mandate, thereby, over the fundamental considerations set forth in this judgment, also the cause of action petitioned by WILD EARTH FOUNDATION be denied, to which, in order to comply with its right and duly process adjective law, should be notified of this decision.

4. To be resolved is the pertinent petition of "Prompt Resolution" of the administrative procedures, presented by Oceanarium Sea World. Since that petition of prompt resolution, is duly established by the National Law of Administrative Procedures No. 19,549 (see Art. 10), the measures suggested in the preceding paragraph should be issued and the interested party notified within a period of thirty working days counting from the day following the presentation of the petition for "Prompt Resolution."

E.R.A.

DICTAMEN NO. 47618

Stamps and signatures are not legible.

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

MAY 16 2002

G. William Hughes
Zoological Director
Funtime, Inc. (c/o Six Flags Worlds of Adventure)
1060 North Aurora Road
Aurora, OH 44202

Dear Mr. Hughes:

Enclosed is Permit No. 1004-1656-00 issued to Funtime, Inc. under the authority of the Marine Mammal Protection Act of 1972 (MMPA), as amended (16 U.S.C. *et seq.*), and Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), authorizing the importation into the United States of two killer whales (Orcinus orca), one adult female from Marineland S.A., Antibes, France, and one adult male from Mundo Marino, Buenos Aires, Argentina, to Six Flags Worlds of Adventure in Aurora, Ohio. Also enclosed is a copy of the notice to be published in the Federal Register announcing issuance of the Permit.

Please review the Permit to ensure that it accurately reflects what was requested. Funtime, Inc. and all those operating under this Permit are required to review and comply with the Permit, including all Special and General Conditions.

In accordance with comments received from the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), note that Special Condition B.1.d. requires that the travel plan be documented at the receiving facility prior to importation, and the animals must be accompanied by a health certificate signed within 10 days of the transport. Also note that Pools 2 and 4 cannot be used as primary enclosures for these animals. In addition, Special Condition B.1.e. requires the proper CITES export permit from France and Argentina be obtained prior to importation of these animals into the United States.

Since your application indicates that this import is on a temporary basis and these animals will be returned to their respective holders at the conclusion of the breeding loans, please note that Special Condition B.1.i. provides authority for the export of the subject animals to their original holders provided transport notification is received by the Permits, Conservation and Education Division 15 days in advance of the proposed export. Please note Special Conditions B.2.b. and B.1.i. apply: (1) to the subsequent transport to the original holder (Marineland S.A. for the female and Mundo Marino for the male); and (2) export requirements to a holder other than the original holder.

An inspection of the subject animals is required at the time of import into the United States (i.e., at the port of entry) by the U.S. Fish and Wildlife Service (USFWS) and APHIS. If you have further questions regarding arrangements for and requirements of this inspection, please contact USFWS Law Enforcement Division (972/574-3254) and APHIS (301/734-8364).

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Under the MMPA, the National Marine Fisheries Service (NMFS) is required to maintain an accurate inventory of marine mammals held in captivity. As indicated by Special Condition B.2.a., upon completion of the imports, please fill out the enclosed Marine Mammal Data Sheets and return them to the Office Director. In the event of a death or the birth of any progeny, NMFS is to be notified within 30 days, as required by Special Condition B.2.d.

The original permit and a file copy of the signature page are enclosed. Please sign and date both, and return the signature page marked "**file copy**" to our office, using the enclosed return envelope. We cannot confirm the Permit is valid until the signed copy is received in our office. You may submit the copy by facsimile to 301/713-0376 and confirm it by mail.

We also request that you contact our office once the transport dates have been confirmed. If you have any questions regarding the Special Conditions of your Permit or the reporting requirements, please contact Jennifer Skidmore or Amy Sloan at 301/713-2289.

Sincerely,

Eugene T. Nitta

Eugene T. Nitta
Acting Chief, Permits, Conservation
and Education Division
Office of Protected Resources

Enclosures

cc w/encl: Dr. Robert Mattlin, MMC
Barbara Kohn, D.V.M., APHIS

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

PUBLIC DISPLAY PERMIT NO. 1004-1656-00

Authorization

Funtime, Inc. d/b/a Six Flags Worlds of Adventure, 1060 North Aurora Road, Aurora, Ohio, is hereby authorized to import into the United States two killer whales (Orcinus orca), one adult female from Marineland S.A., Antibes, France, and one adult male from Mundo Marino, Buenos Aires, Argentina, specified below for public display purposes, as described in the application and subject to the provisions of the Marine Mammal Protection Act of 1972, as amended (MMPA; U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and the Conditions hereinafter set out.

A. Number and Kind of Marine Mammals

One adult female killer whale from Marineland S.A., Antibes, France, identified as "Shouka," and one adult male killer whale from Mundo Marino, Buenos Aires, Argentina, identified as "Kshamenk."

B. Special Conditions

1. Import/Display

   a. The importation of the killer whales authorized above shall be conducted as described, and for the purposes set forth, in the application.

   b. The authority to import the animals authorized herein shall extend from the date of issuance through **May 16, 2003**.

   c. The subject animals must be transported from France and Argentina to the United States in accordance with the U.S. Department of Agriculture's standards entitled "Specifications for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals" (9 CFR Part 3, Subpart E).

   d. Prior to importation into the United States, Funtime, Inc. must have the travel plan documented at their facility, and the animals must be accompanied by a health certificate signed within 10 days of the transport.

   e. The importation of marine mammals is subject to the provisions of 50 CFR part 14 (i.e., no marine mammal may be imported without the required CITES permits).

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f. Funtime, Inc. and any subsequent recipient must continue to meet the three public display criteria required by §104 (c) (2) (A) of the MMPA. Funtime, Inc. must notify the Office Director by certified mail if the APHIS licenses issued to any of its facilities are revoked, suspended, or terminated.

g. The marine mammals obtained under this Permit may not be taken, sold, exported, transported or otherwise transferred, for any purpose other than public display unless a separate permit for scientific research purposes has been issued.

h. The marine mammals obtained under this Permit may not be released into the wild unless such a release has been specifically authorized under a separate scientific research permit that has been issued for that purpose.

i. Funtime, Inc. is authorized to export and return the subject animals to the original holders, Marineland S.A. for the female and Mundo Marino for the male, provided that Funtime, Inc. provides written notification to the Office Director at least 15 days in advance of the intended export. After the subject animal is returned to the original holder, Funtime, Inc. may not re-import the subject animal unless a new permit to import has been issued by NMFS. Any other export of the subject animal must conform to the export requirements set out in the Marine Mammal Transfer/Transport Notifications.

j. The terms and conditions of this Permit shall remain in effect as long as the subject marine mammals imported hereunder are maintained under the authority and responsibility of Funtime, Inc.

2. Notifications/Reports

a. Upon completion of the imports from France and Argentina, Funtime, Inc. must complete the attached Marine Mammal Data Sheets for the subject animals, "Shouka" and "Kshamenk," and submit them to the Office Director.

b. Prior to any subsequent transfer or transport of the subject animals within the United States, Funtime, Inc. must provide written notification to the Office Director of the proposed transfer or transport. A completed Marine Mammal Transfer/Transport Notification form (attached) must be received by the Office Director at least 15 days in advance of the intended transfer or transport. Funtime, Inc. must assure that the intended recipient meets the three public display criteria required by §104 (c) (2) (A) of the MMPA.

c. In the event that Funtime, Inc. assumes permanent custody of the subject animals from Marineland S.A. or Mundo Marino, Funtime, Inc. must provide written notification of the change in custody to the Office Director at least 15 days in advance of the intended transfer.

d. In the event of the death of either subject animal or birth of progeny including stillbirths, Funtime, Inc. must notify the Office Director within 30 days by submitting a Marine Mammal Data Sheet for the animal.

e. Funtime, Inc. must comply with provisions of the MMPA related to any progeny born in the United States.

f. Upon request of the Office Director, Funtime, Inc. shall review and verify the accuracy of its Marine Mammal Inventory Report Summary (MMIRS) on an annual basis. All reports shall be submitted to the Office Director at the address indicated above, in the requested format.

C. General Conditions

1. Responsibilities of the Permit Holder

a. The Permit Holder, in signing this Permit, shall be considered to have accepted and to be prepared to comply with, the provisions of this Permit, applicable Regulations, and the MMPA.

b. The Permit Holder is responsible for all activities of any individual who is operating under the authority of the Permit.

c. Individuals conducting activities authorized under the Permit must possess qualifications commensurate with their duties and responsibilities, or must be under the direct supervision of a person with such qualifications.

d. Under §216.40 of the Regulations, a violation of any of the terms and conditions of this Permit or the Regulations shall subject the Permit Holder and/or any individual who is operating under the authority of the Holder's Permit to civil and criminal penalties, permit sanctions, and forfeiture as authorized in the MMPA and 15 CFR part 904. This Permit is subject to suspension, revocation, and modification in accordance with the provisions of Subpart D of 15 CFR part 904.

e. All personnel of the Permit Holder, including veterinarians requiring State or Federal licenses to practice their profession, shall be, and while employed by the Permit Holder in that capacity, remain, duly licensed under applicable law.

f. The Permit Holder or designated agent shall possess a copy of this Permit when engaged in the permitted activity, when the marine mammals are in transit incidental to such activity, and whenever the marine mammals are in the possession of the Permit Holder or agent. A copy of this Permit shall be affixed to any container, enclosure, or other means of containment, in which the marine mammals are placed for purposes of transit, supervision, or care. For the captive subject marine mammals, a copy of this Permit shall be kept on file in the holding facility.

2. Requirements for Importing and Transporting

a. The marine mammals authorized by this Permit must be taken, imported, and exported in a humane manner. In the event the Office Director determines that any method of taking, import, or export authorized herein or otherwise is not humane, taking, import, or export by such method shall immediately cease and shall not resume until an acceptable method of taking, import, or export has been prescribed by the Office Director. Any inhumane taking, import, or export shall subject the Permit Holder to the penalties of the MMPA, including revocation of this Permit.

g. The Permit Holder shall neither take, import, nor export any marine mammal that is pregnant, a lactating female, or an unweaned young animal, unless such taking, import, or export is specifically authorized in Section B. of this Permit.

h. No marine mammal may be imported unless the Office Director determines that the methods of taking, holding, and transporting marine mammals in the country of origin are consistent with applicable provisions and policies of the MMPA.

3. Transferability and Assignability

This Permit is not transferable or assignable to any other person, and the Permit Holder may not require any direct or indirect compensation from another person in return for requesting authorization for such person to conduct the taking, import, or export activities authorized in this permit.

FILE COPY

4. Permit Amendments

   a. Requests by the Permit Holder for an amendment to the provisions of this Permit must be submitted in writing to the Office Director.

   b. The provisions of this Permit may be amended upon reasonable notice to the Permit Holder by the Office Director.

5. Penalties and Permit Sanctions

   a. Any person who violates any provision of this Permit is subject to civil and criminal penalties, permit sanctions, and forfeiture as authorized under the MMPA or 15 CFR part 904 [Civil Procedures].

   b. Any falsification of information pertaining to the permitted activities, including information provided to NOAA personnel, will be considered a violation of the Permit.

   c. All permits are subject to suspension, revocation, modification, and denial in accordance with the provisions of subpart D [Permit Sanctions and Denials] of 15 CFR part 904.

Date: 5-16-2002

David Cottingham for
Donald R. Knowles
Office Director
Office of Protected Resources
National Marine Fisheries Service

Date: 5/16/2002

G. William Hughes
Zoological Director
Funtime, Inc.
Six Flags Worlds of Adventure

FILE COPY

4. Permit Amendments

   a. Requests by the Permit Holder for an amendment to the provisions of this Permit must be submitted in writing to the Office Director.

   b. The provisions of this Permit may be amended upon reasonable notice to the Permit Holder by the Office Director.

5. Penalties and Permit Sanctions

   a. Any person who violates any provision of this Permit is subject to civil and criminal penalties, permit sanctions, and forfeiture as authorized under the MMPA or 15 CFR part 904 [Civil Procedures].

   b. Any falsification of information pertaining to the permitted activities, including information provided to NOAA personnel, will be considered a violation of the Permit.

   c. All permits are subject to suspension, revocation, modification, and denial in accordance with the provisions of subpart D [Permit Sanctions and Denials] of 15 CFR part 904.

Date: 5-16-2002

Donald R. Knowles
Office Director
Office of Protected Resources
National Marine Fisheries Service

Date: MAY 17 2002

G. William Hughes
Zoological Director
Funtime, Inc.
Six Flags Worlds of Adventure

MARINE MAMMAL DATA SHEET

Date _____
SHT# _____

OMB No. 0648-0084, exp 7/31/03
HN: SN:
For NMFS Use Only

I. Holder-Specific:

Holder: _____ Facility: _____
Person or other Entity With Custody of the Marine Mammal — Name of Facility (if different from Holder)

Date assumed custody: ___ – ___ – ___ Date arrived at Facility: ___ – ___ – ___

City/State/Zip (include Country for foreign facilities): _____
Location of Facility

Animal Identification No. _____ Animal Name: _____
(assigned by holder) — (assigned by holder)

Captive Purpose(s): ☐ Public display ☐ Scientific research ☐ Enhancement

II. Animal-Specific:

Species: _____ Sex: ☐ Male ☐ Female ☐ Unknown
Common Name - Scientific Name

Population Name: _____

NOAA Identification No. _____ (☐ check here if unknown or not yet assigned)

Date of birth: ___ – ___ – ___ ☐ Actual ☐ Estimated

Captive Origin (check only one): ☐ Captive born ☐ Wild capture ☐ Beach/stranded ☐ Unknown

Date of original captivity: ___ – ___ – ___ (**ATTACH** documentation if before December 21, 1972.)

III. Source: Indicate how and from whom custody of this animal was obtained, including change in facility.

☐ Captive birth

☐ Transfer/ Transport — Name of Previous Holder: _____
Name of Previous Facility: _____

☐ Import — Permit No. _____ or ☐ For medical treatment otherwise unavailable (16 U.S.C. 1379(h)(2))

☐ Beach/Stranded (Please see notes)

☐ Wild Capture — Permit No. _____ Collector: _____

Location: _____/_____ _____
Latitude/Longitude — Geographical Name

IV. Disposition: The date and reason this animal left your custody or changed facility.

☐ Transfer/ Transport Date: ___ – ___ – ___ Recipient: _____
Facility: _____

☐ Death Date: ___ – ___ – ___ Cause: ☐ Premature/still birth ☐ Euthanasia ☐ Other

If "Euthanasia," indicate reason: ☐ life-threatening condition involving pain/suffering or ☐ other

If "Other Cause," describe briefly: _____

☐ Release Date: ___ – ___ – ___ Permit No. _____ or ☐ Unauthorized release/escape
(reintroduction)

Location: _____ _____
Geographic Location — Tag number or description of other identifying markings

MARINE MAMMAL DATA SHEET

Date _____
SHT# _____

OMB No. 0648-0084, exp 7/31/03
HN: SN:
For NMFS Use Only

I. Holder-Specific:

Holder: _____ Facility: _____
Person or other Entity With Custody of the Marine Mammal — Name of Facility (if different from Holder)

Date assumed custody: __ __ – __ __ – __ __ Date arrived at Facility: __ __ – __ __ – __ __

City/State/Zip (include Country for foreign facilities): _____
Location of Facility

Animal Identification No. _____ Animal Name: _____
(assigned by holder) — (assigned by holder)

Captive Purpose(s): ☐ Public display ☐ Scientific research ☐ Enhancement

II. Animal-Specific:

Species: _____ Sex: ☐ Male ☐ Female ☐ Unknown
Common Name - Scientific Name

Population Name: _____

NOAA Identification No. _____ (☐ check here if unknown or not yet assigned)

Date of birth: __ __ – __ __ – __ __ ☐ Actual ☐ Estimated

Captive Origin (check only one): ☐ Captive born ☐ Wild capture ☐ Beach/stranded ☐ Unknown

Date of original captivity: __ __ – __ __ – __ __ (**ATTACH** documentation if before December 21, 1972.)

III. Source: Indicate how and from whom custody of this animal was obtained, including change in facility.

☐ Captive birth

☐ Transfer/ Transport — Name of Previous Holder: _____
Name of Previous Facility: _____

☐ Import Permit No. _____ or ☐ For medical treatment otherwise unavailable (16 U.S.C. 1379(h)(2))

☐ Beach/Stranded (Please see notes)

☐ Wild Capture Permit No. _____ Collector: _____

Location: _____/_____ _____
Latitude/Longitude — Geographical Name

IV. Disposition: The date and reason this animal left your custody or changed facility.

☐ Transfer/ Transport Date: __ __ – __ __ – __ __ Recipient: _____
Facility: _____

☐ Death Date: __ __ – __ __ – __ __ Cause: ☐ Premature/still birth ☐ Euthanasia ☐ Other

If "Euthanasia," indicate reason: ☐ life-threatening condition involving pain/suffering or ☐ other

If "Other Cause," describe briefly: _____

☐ Release Date: __ __ – __ __ – __ __ Permit No. _____ or ☐ Unauthorized release/escape
(reintroduction)

Location _____ _____
Geographic Location — Tag number or description of other identifying markings

NOAA FORM 89-881

U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

MARINE MAMMAL TRANSFER/TRANSPORT NOTIFICATION OMB No. 0648-0084:Exp. 7/31/ 03

I. GENERAL

Transfer/transport notifications must be RECEIVED at least 15 days before the date of transfer/transport. Only the marine mammals identified on the Marine Mammal Data Sheets ATTACHED to this notice may be transferred/transported. A new Marine Mammal Transport Notification should be submitted if transfer/transport does not occur within 60 days of the date the notice is received by the National Marine Fisheries Service (NMFS). Within 30 days following the transfer/transport the Receiver should submit updated Marine Mammal Data Sheets for the marine mammals transferred/transported.

Sections II through V must be completed for the transfer/transport of marine mammals for purposes of public display. Transfer/transport of marine mammals for public display purposes requires notification only; however, to ensure this right is invoked in accordance with the requirements of the Marine Mammal Protection Act of 1972 (MMPA), as amended (16 U.S.C. 1361 et seq.), Shipper and Receiver must certify the Receiver's compliance with the three public display criteria in Section IV. See attached NOTES[1] concerning the transfer/transport of marine mammals associated with imports, exports, captures from the wild, transfer/transport between foreign facilities, and obtaining or retaining marine mammals from rehabilitated beached and stranded stock for which a determination has been made that their return to their natural habitat is not feasible.

Sections II, III and IV must be completed for the transfer/transport of marine mammals for purposes of scientific research or enhancing the survival or recovery of a species or stock (enhancement). Persons intending to obtain marine mammals for scientific or enhancement purposes must first be issued a permit under section 104(c) of the MMPA.

II. SHIPPER

On ____/___/___ (planned transfer/transport date[2]), _____(Number) animals identified on ATTACHED Marine Mammal Data Sheets

and presently held by _____ at _____
Shipper[3] Name of Facility (if different than Shipper)[5]

will be transferred/transported to _____ at _____
Receiver[6] Name of Facility (if different than Receiver)

Please check here if this is a temporary transfer/transport ☐

III. RECEIVER

_____ is receiving custody of the marine mammal(s) identified on the ATTACHED Marine Mammal Data Sheets and these marine mammals will be held for the purpose of (Check all that apply):

☐ Public Display (**Complete Section IV**)

☐ Scientific Research (Permit Required) - Permit No. _____

☐ Enhancement (Permit Required) - Permit No. _____

IV. TRANSFER/TRANSPORT FOR PURPOSES OF PUBLIC DISPLAY

The Receiver listed in Section III (**Check at least one box for each item below**):

1) Offers an education or conservation program that is based on professionally recognized standards of the public display community[6] .

The standards on which the receiving person/facility's education/conservation program is based are:

☐ AZA standards[6], ☐ Alliance standards[6] , or ☐ ATTACHED,

2) Is registered or holds an exhibitors license issued under the Animal Welfare Act (7 U.S.C. 2131 et seq.)
[If receiver is a foreign facility, check this box ☐ and see attached Export requirements.]

USDA License/Registration Number _____ A copy of the USDA License/Registration is:

☐ ATTACHED[7] , or ☐ has been submitted previously and has not changed; and

3) Maintains (i.e., owns, leases or otherwise controls) facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis with access that is not limited or restricted other than by charging ad admission fee. A description of the schedule during which the facility is open to the public (e.g., a public notice or brochure advertising this information) is:

☐ ATTACHED[7], or ☐ has been submitted with a previous Marine Mammal Transfer/Transport Notification

MARINE MAMMAL TRANSFER/TRANSPORT NOTIFICATION

NOTES

1. The Marine Mammal Protection Act of 1972, as amended (MMPA) (16 U.S.C. 1361 et seq.) requires that the National Marine Fisheries Service (NMFS) be given 15 days' advance notification before the transfer/transport of most marine mammals (cetaceans and pinnipeds, except for walrus), and that the U.S. Fish and Wildlife Service (FWS) be given 15 days' advance notification of any walrus, polar bear, manatee sp. dugong, marine otter or sea otter. To ensure compliance with MMPA requirements, NMFS recommends persons transferring/transporting marine mammals submit this notification in the attached format (i.e., Marine Mammal Transfer/Transport Notification). The NMFS receipt date is the start date of the required 15 days notification. NMFS will accept a transfer/transport notification by facsimile ONLY IF: (a) the facsimile transmitted is complete, signed and in the attached format; and (b) the original is forwarded to NMFS by express mail and received within three working days. If the marine mammals are listed as endangered or threatened under the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 et seq.) or subject to the Convention on International Trade in Endangered Species (CITES), permit and other requirements of the ESA and CITES must be met.

   Persons exporting marine mammals must comply with the EXPORT requirements described on the back of this page. Permits are required for the IMPORTATION of marine mammals, for their CAPTURE from the wild, or for the RETENTION of rehabilitated beached and stranded marine mammals that have been determined releasable (i.e., in lieu of the release and re-capture of such marine mammals under a capture permit, a permit must be issued for their retention.) Permits are also required to obtain marine mammals for scientific research or enhancement purposes from captive stock, whether by transfer from another person/facility or by retention of non-releasable rehabilitated beached and stranded stock. NMFS written authorization (not a permit) is required to retain or obtain for public display purposes rehabilitated beached and stranded stock determined non-releasable (i.e., this required authorization is in addition to the 15 days' advance notification required for any transfer/transport.) Requests for authorization to obtain or retain such marine mammals must be submitted to NMFS after the determination is made that release to the wild is not feasible and at least 15 days' before their transfer/transport or use for public display purposes; and at least 60 days before their proposed export. (See the reference to beached and stranded marine mammals on the back of the Marine Mammal Data Sheet.)

   A notice of receipt of permit applications is required by statute to be published in the Federal Register and applications and supporting documentation are available for review by the public at every stage of processing and during the life of the permit. The provisions at 50 CFR 216.33 implement these statutory requirements, and are referenced in and attached to the Application Instructions. All permit documentation including reports and the information required herein, is subject to the Freedom of Information Act (FOIA) with personal or sensitive information that is subject to the Privacy Act redacted when released under FOIA.

2. This is a planned or target date ONLY. Where a specific target date cannot be identified, a period of us to seven days may be identified instead (e g., 1/4 - 1/18). Actual transfer/transport may occur on a different date but may not occur until at least 15 days following NMFS receipt of the transfer/transport notification.

3. "Shipper" means a person (i.e., any individual or public or private entity) with permanent custody of the marine mammal to be transferred/transported. All marine mammal transports between facilities/location require notification regardless of whether such facilities are owned, operated or otherwise controlled by the same or different persons, or whether the transfer/transport is temporary or permanent.

4. "Receiver" means a person (i.e., any individual or public or private entity) that is receiving the marine mammals to be transferred/transported Receiver who obtains marine mammals for public display purposes must meet the three requirements of Section IV, including maintaining (i.e , owning, leasing or otherwise controlling) facilities at the receiving location for the public display of marine mammals.

5. The name of the shipper/receiver need not be the same as the facility. The shipper/receiver may be a person or corporate entity that owns/operates several facilities; or the shipper/receive may hold marine mammals in multiple facilities. In any case, and particularly in circumstances where the name of the shipper/receiver is different from the facility, NMFS requests that the facility be identified.

6. Standards for education and conservation programs developed and endorsed by the American Association of Zoos and Aquariums (AZA) and the Alliance of Marine Mammal Parks and Aquariums (Alliance), representing approximately 60% of the U S. marine mammal public display community, were published in the *Federal Register* on October 6, 1994 (59 FR 50900). Please call the Permits Division at the number below or write to the address listed in Section VI if you would like a copy of this notice If applicable, the AZA/Alliance standards may be referenced as the standards on which your education or conservation program is based by simply checking the applicable "box." However, please note that while these professionally recognized standards have been provided by the AZA and Alliance, they represent only two examples of such standards. Other professionally recognized standards of the public display community may differ from these examples If your education or conservation program is based upon different professionally recognized standards of the public display community, please provide a copy of those standards NMFS maintains a record of such standards for reference purposes only.

7 Please attach this documentation only if the standards or restriction on public access have changed or if your Exhibitor's License has changed or been renewed since your last submission of this information.

8. Principal Officer, Director, President or other person with responsibility for and authority to determine the disposition of the marine mammals involved

QUESTIONS?

If you need assistance in completing a Marine Mammal Transfer/Transport Notification, please contact the Permits Division at the address listed in Section VI or call us at (301) 713-2289

MEMORANDUM FOR: F/PR - Donald R. Knowles

FROM: F/PR1 - Eugene T. Nitta

SUBJECT: Report on the Application for a Permit for Public Display Under the Marine Mammal Protection Act, submitted by Funtime, Inc. d/b/a Six Flags Worlds of Adventure [File No. 1004-1656]: Recommendation for Issuance

Abstract

Funtime, Inc. d/b/a Six Flags Worlds of Adventure requests a permit to import two killer whales (Orcinus orca), one adult female from Marineland S.A., Antibes, France and one adult male from Mundo Marino, Buenos Aires, Argentina, to Six Flags Worlds of Adventure in Aurora, Ohio. Marineland S.A. and Mundo Marino has requested Funtime, Inc. maintain these whales as loans to be incorporated into Six Flag's breeding and exhibition program.

Chronology

October 27, 2001	Date of application
October 29, 2001	Application received complete
November 26, 2001	Application distributed
November 30, 2001	Application published in the Federal Register
December 31, 2001	Close of public comment period
January 9, 2002	Marine Mammal Commission comments received
January 28, 2002	Additional information requested from applicant
February 19, 2002	Additional information received complete
February 25, 2002	Public comment period re-opened in Federal Register
March 25, 2002	Marine Mammal Commission comments received
March 27, 2002	Public comment period extended in Federal Register
April 11, 2002	Close of extended public comment period

Comments

The Marine Mammal Commission (MMC) recommended approval of the application provided:

- the Service, in consultation with the Animal and Plant Health Inspection Service (APHIS), is satisfied that the applicant's plans and facilities for transport and maintenance of the requested animals are adequate to provide for their health and well-being; and

- the Service is satisfied that the applicant's education program is acceptable (i.e., that a program is in place as a component of the proposed public display; that the basic message of the program is accurate and consistent with the policies of the Marine Mammal

Protection Act; and that the program includes accurate information about the life history and other aspects of the species).

Although the applicant meets the minimum space requirements under existing regulations, the Commission is concerned that the facilities are somewhat small for the permanent maintenance of killer whales and suggest that APHIS in consultation with the Service and other interested parties, work to publish proposed changes to the minimum space requirements for killer whales. The Commission believes that the activities for which it has recommended approval are consistent with the purposes and policies of the Marine Mammal Protection Act (MMPA).

During the second review of the application, the Commission notes that:

- the collection the male as a stranded animal appears to be consistant with Argentinean law. Concerns that the animal was taken as a forced stranding have not been sufficently supported by documented evidence;
- the Argentinean government's "C" certificate appears to confirm that the male is not appropriate for release to the wild, although it doesn't specifically indicate that the government determined that the release ot the animal was not possible;
- the French government has issued a CITES export permit for the female killer whale and it is expect that the Argentinean government will be issuing a CITES export permit fo the male whale shortly;
- Little information exist concerning (1) the physiology and genetic composition of Southern stock killer whales, (2)the extent to which animals form the Southern stock differ physiologically and genetically from those in the Icelandic stock. The Service should therefore be satisfied that breeding the requested animals is appropriate;
- A discription of the status of the killer whale stock in the waters off Argentina has been provided, although the source of the information is unclear;
- The attending veterinarian's statement concerning the transport and care of the animals appears to be adaquate.

MMC reiterated that the facilities may be somewhat small for the permanent maintenance of killer whales. The Commission recommends that the Service consult with APHIS regarding arrangement for maintenance should separation of the animals be necessary for any reason. The Commission further reiterated its recommendation that APHIS in consultation with the Service and other interested parties, work to publish proposed changes to the minimum space requirements for killer whales.

The USDA Animal and Plant Health Inspection Service (APHIS) does not object to the issuance of this permit.

- APHIS believes that the activities are consistent with the purposes and policies of the Animal Welfare Act (AWA). The USDA license under the AWA for Funtime, Inc. is current, and there are no additional AWA concerns that need to be addressed with this application. The provisions of the transportation described are in compliance with the requirements of the AWA.

- It was noted that Pools 2 and 4 cannot be used as primary enclosures for these animals. The animals must have a health certificate for importation and that copies of all prior medical records must be on file. A transport plan should be on file at the facility prior to transport. The attending veterinarian must determine transport sequence, acclimation times and quarantine procedures.

During the second review of the application, APHIS did not have further objections to the issuance of the permit as subsequent conversations with applicant successfully addressed previous concerns.

In addition APHIS submitted comments on May 13, 2002 addressing questions raised in NMFS' letter dated January 28, 2002. In their response, APHIS clarified that the "receiving facility meets AWA standards, is licensed, and has the space and personnel to handle the animals. It is beyond the scope of our mandate to comment on the behavioral disposition of the animals involved. We have never observed them. The facility has the space to separate the animals in case there are compatability issues. I am unaware of there being ongoing problems of incompatablity among killer whales in captivity."

APHIS further stated "it is beyond the scope of our jurisdiction to regulate or comment on the potential breeding of animals as long as there is sufficient space available for offspring. I provide a biologist viewpoint on advantages of cross-breeding (increase or hybrid vigor) and state that, as it is unlikely that any of the animals will be released to the wild in the future (at least not without an MMPA permit in which such concerns can be addressed) and there is no chance of accidental release from the facility, this concern should be a nonissue."

Public Comments: A total of Sixteen letters were received during the public comment periods with regard to this application.

Public Comment Period (closing December 31, 2001)
In Support:

The Alliance of Marine Mammal Parks and Aquariums (Alliance) and four local educators representing two school districts supported the application on its educational merits. The Alliance further supported the application based on the breeding potential and genetic diversity of these animals to the North American captive population.

In Opposition:
31 comments were received in opposition to the permit application. 16 were from individuals and 15 represented NGO's including Animal Protection Institute (API), Cetacean Society International (CSI), Coalition for No Whales In Captivity, Earth Island Institute (EII, on behalf of themselves, In Defense of Animals and People for the Ethical Treatment of Animals), Humane Society of Canada (HSC), Humane Society of the United States (HSUS), OrcaLab,

Orca Network (Berta), Orca Network (Garrett), Sea Sanctuary, Inc., SOS Dauphins, Whale and Dolphin Conservation Society (WDCS), Wild Earth Foundation (WEF), World Society for the Protection of Animals (WSPA) and ZooCheck Canada, Inc.

These comments encompassed the following arguments against the importation:

· Captivity is Inhumane

Thirteen individuals and numerous NGO's offered comments that captivity is cruel and inhumane for this species. Their size, large home ranges, and complex social structure make this species unsuitable for captivity. In addition, captivity decreases life expectancy (average survival time of 6 years) of this normally long-lived species. The female is currently maintained in a matrilineal group which is similar to group structure in the wild, to remove her from this group would be inhumane.

· Captive Breeding is not a compelling justification

Five individuals stated that captive breeding is not necessary in light of adequate population numbers in the wild.

· Educational value is not a compelling justification

The expanding use of alternative modes of education including viewing in the wild, video, film and print does not justify captivity of this species. The entertainment value of these animals does not translate into educational value. WDCS and API contends that the educational requirement for public display can not be evaluated, monitored or enforced as the "professional standards" are those established by the industry to be regulated. (seven individual comments, Orca Network, API and WDCS)

· Conservation Contributions

API suggests that the flow of useful information from captive studies to wild studies is generally unidirectional with captive marine mammals benefitting more from wild research than vice versa.

· Concern regarding Public Safety and Animal Care

Comments were received stating that Six Flags has a questionable track record regarding public safety (one individual) and animal care (one individual). Six Flags does not have a history of successful breeding nor do they have a history of successfully maintaining this species. WSPA notes that two orcas in Six Flags' care died within the last 18 months. WDCS suggests that Six Flags does not have the expertise, facilities and resources to successfully maintain killer whales. EII further referenced complaints from former Six Flags Marine World (California) employees regarding instances of animal abuse. The adult male has been reported as aggressive and may constitute a threat to the trainers or the public.

· Sub-standard Facilities and Lack of Animal Welfare Protection Legislation

Coalition for No Whales In Captivity states that imports from sub-standard facilities and countries with no animal welfare legislation should be denied to discourage the breeding and maintenance of captive marine mammals under such conditions.

· Supporting Subsequent Captures (one individual, OrcaLab, WDCS, and WEF)

New imports of killer whales for public display will provide a demand leading to subsequent capture of more animals from the wild and they would be traded as "breeding loans". It is probable that the male whale will be replaced by another animal in the near future which could be traded to another marine mammal park in the future.

· Legal Issues (foreign)

A. France

Killer whales are listed on Annex A of the European Community Regulations which implement CITES. As such, export for commercial purposes including public display is not permitted.

B. Argentina

Killer whales are listed as Appendix II of CITES. Accordingly, the export must be permitted by the country of export. CITES requires that the Management Authority is satisfied that the animal was not obtained in violation of Argentinian laws. If this animal was captured as the result of a forced stranding and thus was taken illegally and inhumanely, an export permit can not be granted (see stranding comments).

· US Responsibility

As the popularity of marine mammal parks increases internationally, so does the demand for animals. The public display industry in Japan is expanding and looking to Russia to provide killer whales for their parks. The US was one of the first countries to begin this trend and now contains one of the largest public display industries in the world. As a major consumer of captive marine mammals, approval or disapproval of permits has considerable implications. It is time for the US to take responsibility for its part in shaping the nature of this industry.

· NMFS' Proposed Rule (API)

The proposed rule regarding public display of marine mammals has not been published as a final rule. Decisions regarding permits for public display should be postponed until the final rule is effective.

· NEPA Review

EII and HSC dispute the claim that the application can be processed under a categorical exclusion to NEPA. This action will have controversial environmental effects present, unknown or uncertain or unique environmental risks or establish a precedent for future action and thus can not be categorically excluded.

Regarding the Specific Animals:

· Status of the Stocks (Argentina)

The status of the population of killer whales inhabiting the waters of Argentina is suggested to be small and vulnerable. Every attempt should be made to release Kshamenk back to the wild.

· Stranding in Argentina

Many groups including WSPA, OrcaLab, WDCS, HSUS, WEF and Lic. Hugo P. Castello of Argentina suggest that the male killer whale's stranding was forced and constitutes an illegal capture from the wild. This animal's releasability was not assessed and release should be considered first.

· Aggressive Behavior (male)

There have been reports that the male is unmanageable and poses a threat to the staff and the general public.

· Incompatibility of the Animals

As these two animals are from different populations incompatibilities may arise resulting in aggression of the male towards the female. The public display industry has a history of failing to handle situations of incompatibility adequately.

· Health of the male

The male is reported as suffering from stomach problems. The length of transport may exacerbate his health problems, as well as the climate change from Argentina to Ohio, could lead to his death.

· Breeding Concerns

A. Age of the Animals

These animals are too young to breed and have not yet reach sexual maturity. The female has not yet reached breeding age and may be impregnated prematurely jeopardizing her health. Her age may cause her to be treated aggressively by the male putting her well-being at risk.

B. Population Concerns

These animals are from different populations and cross-breeding populations defeats the propose of captive breeding and is not suggestive of natural breeding behavior/conditions. The implications and consequences of breeding animals from different populations must be adequately addressed.

C. Conservation Aspects

The breeding program is not for conservation proposes as the offspring will not be able to be released to replenish wild stocks. The applicant has failed to demonstrate the conservation value of a breeding program.

D. Breeding History

Historically, killer whales who give birth without other female company fare poorly and the historical information would defeat the purpose of the application (to propagate killer whales). The public display industry has a poor record of successfully raising progeny and is failing to produce a sustainable population.

· Solitary Animal (female)

A permit for the female should not be issued until the male's status is resolved. Should the permit for the male be denied, it would not be appropriate to import the female to be maintained as a solitary animal.

· Transport

WDCS states that the stress, discomfort and the potential for injury of the proposed transports constitutes an unnecessary risk to the health and welfare of these animals. Historically, these transports encounter unexpected delays and the animals suffer unnecessary stress and injury.

Additional Information Requested

Based on the substantive comments received during the initial public comment period, clarification of the following items were requested from the applicant.

- Further documentation of the circumstances regarding the beaching of the male killer whale and subsequent attempts for release;
- A statement regarding CITES export permits;
- Additional information regarding the North American cooperative breeding program for killer whales referenced in the application;
- A description of the status of the killer whale stock in the waters off Argentina;
- The duration of truck transport from each of the facilities to the airport, transport from the airport to Six Flags Worlds of Adventure and the total flight time; and
- A statement from the attending veterinarian concerning transport sequence, acclimation times and quarantine procedures.

Public Comment Period (closing April 11, 2002)

In Support:

106 comments were received in support of this application including numerous educators, the governor of Ohio, the Bainbridge Township Trustees, the Alliance of Marine Mammal Parks and Aquariums, the American Zoo and Aquarium Association's Marine Mammal Taxon Advisory Group and the Harbor Branch Oceanographic Institution.

· Entertainment, Education and Economic value (tourism)

Numerous commentors stressed the value of these animals for entertainment, education and economic reasons.

· Geographic proximity to an ocean

The facility is in Ohio is geographically distant from the ocean providing many members of the community their only opportunity to see a killer whale in person.

· Tradition of killer whale in Northeastern Ohio

As killer whales were a foundation of the facility as Sea World of Ohio, the importation of these whales would continue a tradition of killer whales in Northeastern Ohio set by the previous owners.

· Breeding program

Several comments focused on the expansion of the breeding program by inclusion of these individual whales to the North American captive population.

· Experience of Personnel

The personnel currently at Six Flags Worlds of Adventure previously worked at the facility when it was Sea World of Ohio and these individuals have experience maintaining killer whales in captivity.

· Adequate Facilities

The facility in question previously maintained killer whales while under Sea World management and have the facilities to provide for the maintenance of these animals.

· Companionship for the male from Argentina

The male killer whale in Argentina is currently maintained as a solitary animal. Transport to the Six Flags Worlds of Adventure facility with the female from France would provide for conspecific companionship.

· Unstable political situation in Argentina might affect the care of the male should he remain in Argentina

The care of the male killer whale in Argentina might deteriorate should the political situation in Argentina continue to be so unstable.

· Captive animals do not survive when released to the wild

Releasing captive marine mammals into the wild is experimental and attempts have not been successful.

Alliance of Marine Mammal Parks and Aquariums reiterated their support for the application. Six Flags Worlds of Adventure is a member in good standing with the Alliance and as such represent members of a community of professional expertise and knowledge of the care and handling of marine mammals. The Alliance stressed the educational value of these animals, the opportunity for research and incorporation into a breeding program. The breeding population would benefit by the addition of these animals to the breeding population and their contributions to the genetic diversity of the overall captive population.

The American Zoo and Aquarium Association's Marine Mammal Taxon Advisory Group supplemented their letter of support provided by the applicant with additional information addressing comments received during the first comment period. The killer whale exhibit at Six Flags Worlds of Adventure currently meets USDA standards for up to four killer whales under the Animal Welfare Act, therefore concerns regarding size for two animals have been addressed. They argue that the female is at a reproductive age considering that the youngest captive born killer whale to give birth was 8 years old and the female in question is currently 9 years old.

The Harbor Branch Oceanographic Institution supports the application as the current population of killer whales in captivity is small and importation and subsequent breeding of the male would provide for genetic contribution of a unrelated male enhancing genetic stability. There is no biological justification for excluding the male killer whale as scientific studies do not delineate *Orcinus orca* sub-species. The current North American zoological populations contain animals from different geographic locations which have successfully breed and produced offspring. Each of the animals proposed for importation are in a non-breeding environment. The male is held as a solitary animal and the female cannot be maintained on a long-term basis with related males at her facility. Importation of these animals would provide for their long-term social

needs and allow them to contribute to the captive population through the breeding program.

Opposing Comments:

107 comments were received against this application of which 69 letters referenced and supported the comments of the World Society for the Protection of Animals (WSPA).

The majority of comments included in these letters encompass the following arguments against the importation:

· Captivity is inhumane

Captivity is cruel and inhumane for this species. Their size, large home ranges, and complex social structure make this species unsuitable for captivity. In addition, captivity decreases life expectancy (average survival time of 6 years) of this normally long-lived species. As captivity is inhumane, killer whales kept in captivity should be released back into the wild.

· Entertainment is not education

The entertainment value of these animals does not translate into educational value.

· Import is for and will support commercial activity

These imports are requested for commercial purposes to provide an expected attraction to increase attendance at Six Flags Worlds of Adventure. Six Flags Worlds of Adventure is a for profit theme park mainly interested in the commercial value of these animals.

· Concern regarding Public Safety and Animal Care

Six Flags management has failed to demonstrate that it can provide for the health and well being of orcas. Two orcas maintained at Six Flags Marine World have died in the last 18 months.

· Facilities are inadequate to hold killer whales

Numerous commentors expressed concern regarding the size of the facility where the killer whales would be maintained as it appears to small to adequately meet their needs.

· Stranding in Argentina

It has been suggested the male was obtained through forced stranding (or opportunistic capture while feeding) and release of this "stranded" animal has not been attempted nor has an adequate assessment regarding releasability been made. The stranding event has not been supported by video or photographs. Statements concerning the animal's condition at time of "stranding" is not consistent with a need to transfer an animal to captivity for rehabilitation.

· Health of the male

The male is reported to be unhealthy. The length of transport may exacerbate his health problems and lead to his death.

· Incompatibility of the animals from different populations

As these two animals are from different populations incompatibilities may arise resulting in aggression of the male towards the female which could put her well being in danger.

· Reports of Aggressive Behavior of the male

There have been reports that the male is unmanageable and may pose a threat to the staff and the general public.

· Transport

The stress, discomfort and the potential for injury of the proposed transports constitutes an unnecessary risk to the health and welfare of these animals.

· Supporting subsequent captures and forced strandings

Imports of killer whales for public display will lead to subsequent captures of more animals from the wild to be traded as "breeding loans". It is probable that the male whale will be replaced by another animal in the near future which could be traded to another marine mammal park in the future.

WSPA Comments

- Kshamenk's origins are unclear. Evidence suggests that he may have been illegally stranded in order to be sold into captivity. This orca's status needs to be assessed by an independent panel to determine if he could be returned to the wild.
- Kshamenk is not healthy enough to survive the trip from Argentina to Ohio. The stress of being transported could lead to his death.
- Shouka is very young and experts do not feel she is a suitable mate. A premature pregnancy could put her health in danger.
- These two orcas come from different families (Patagonian and Norwegian) and would not interact in the wild. It is possible that Kshamenk would become aggressive towards Shouka if confined in tank.
- Six Flags management has failed to demonstrate that it can provide for the health and well being of orcas. Two orcas under their care have died in the last 18 months.

Six NGO's including Cetacean Society International (CSI), Earth Island Institute (EII, on behalf of themselves, In Defense of Animals and People for the Ethical Treatment of Animals), the Humane Society of the United States (HSUS), OrcaLab, the Whale and Dolphin Conservation Society (WDCS) and the Wild Earth Foundation (WEF) provided additional comments opposing this application.

The comments from the NGO's are summarized as follows:

· Violation of CITES (WDCS)

Killer whales are listed as Appendix II of CITES. Accordingly, the export must be permitted by the country of export. CITES requires that the Management Authority is satisfied that the animal was not obtained in violation of Argentinian laws. If this animal was captured as the result of a forced stranding and thus was taken illegally and inhumanely, any export permit obtained would be invalid. No export permit has been issued by Argentina and submitted to NMFS as legality of taking.

· Legal Actions in Argentina (WDCS, HSUS, CSI

The NGOs have been notified of pending legal actions in Argentina. These legal actions have not concluded and could have bearing on a determination of the legality of the male's stranding and subsequent transfer under CITES and the MMPA provisions. The delay in the CITES export permit suggest that the Argentinean government may be waiting for a decision from NMFS' before making the CITES determination. CSI understands that the legal process in Argentina requires that the export permit must be applied for and signed before legal review and a finding by a Federal Argentinean judge can occur. If the export permits are secured, this animal may be exported before the conclusion of the legal proceeding allowing Six Flags to potentially import this animal contrary to Argentinean law should the judge find that the capture was illegal.

· Stranding in Argentina (WDCS, EII, HSUS, CSI, Castello

The additional comments submitted by Funtime, Inc. are inadequate to explain the circumstances regarding the stranding of the male in Argentina. No photographs or video exist of this stranding event which is considered standard practice. Commentors question the judgement of Mundo Marino in bring the whale into captivity given his condition and the humaneness of this handling during the transport. They further question why this animal was not able to escape at high tide as he was the smallest of the whales which stranded. They dispute the validity of the testimonies of the fisherman given the length of time that has passed, their affiliation with Mundo Marino, the inconsistencies between the statements and the omission of important information and other key witnesses. It is also noted that on the "C" certificate, the majority of the marine mammals at Mundo Marino have been obtained through stranding events. Furthermore, the Mar del Plata Aquarium requested orca capture permit citing forced stranding as the method of capture in the same area where the male was taken. Capture by forced stranding is in violation of Argentinean law.

· Retention of the whale in Argentina (WDCS, HSUS)

Commentors note that there is an absence of documentation regarding the decision to maintain the male permanently in captivity. The statement provided by Bastida contains biased opinions of this case and contain inaccuracies regarding previous releases of cetaceans. As the former director of Mundo Marino Foundation, his objectivity as an independent analyst should be suspect.

· Definitive Possession in Argentina (WDCS, HSUS)

As killer whales are considered a federal natural resource and cannot be transferred to other individuals, commentors question the legality of the import. This question is being considered in legal actions taking place in Argentina. The "C" certificate submitted as evidence of possession lacks an authorization number and contains various discrepancies.

· Concern regarding Animal Care and Facilities (WDCS)

Six Flags management has failed to demonstrate that it can provide for the health and well being of orcas. Two orcas maintained at Six Flags Marine World have died in the last 18 months. There is additional concern that the size of the facility where the killer whales would be

maintained is to small to adequately meet their needs.

· Quarantine Procedures (HSUS)

The statement from the attending veterinarian concludes that a formal quarantine procedure will not be necessary upon importation. Although Six Flags Worlds of Adventure will be able to physically separate these animals with barriers, they lack the isolation capabilities to separate the water within the facility. Given that the male may have been exposed to pathogens prior to captivity and the lack of a quarantine period, the potential to infect the female with an unknown pathogen is greatly increased.

· Adverse Impact on Wild Stocks (WDCS)

There is not enough evidence provided by the applicant that this activity will not have an adverse impact on the wild stock of killer whales in Argentina. The statement provided fails to mention the author, his/her credentials and references for the information.

· Age of the male (WDCS)

There is dispute as to the age of the male maintained in Argentina which may have implications regarding maturity and the determination of non-releasability.

· CITES export permit from France (WDCS)

Killer whales are listed on Annex A of the European Community Regulations which implement CITES. As such, export for commercial purposes including public display is not permitted and the export permit should be considered invalid.

· Solitary Animal

WDCS contends that a permit for the female should not be issued as it would not be appropriate to import the female to be maintained as a solitary animal.

· Transport

WDCS reiterates their concern that the stress, discomfort and the potential for injury of the proposed transports constitutes an unnecessary risk to the health and welfare of these animals. There are also no additional assurances or documentation to minimize the stress to the animals given the warmer weather.

· Breeding Concerns (WDCS, EII, HSUS)

These animals are from different populations and cross-breeding populations defeats the propose of captive breeding and is not suggestive of natural breeding behavior/conditions. The implications and consequences of breeding animals from different populations have not been adequately addressed. The breeding program is not for conservation proposes as the offspring will not be able to be released to replenish wild stocks. The World Conservation Union (IUCN) specifically states that "reintroduction to the wild should be the ultimate objective of all captive breeding programs". The applicant has failed to demonstrate the conservation value of a breeding program or its dependence to the education program. Transport of the male is not necessary to obtain research or breeding goals. Research regarding the physiology and genetics

of this animal can be conducted in Argentina. Breeding goals can be reached through artificial insemination and sperm banking.

· Incompatibility of the animals from different populations (WDCS, EII

As these two animals are from different populations, incompatibilities may arise resulting in aggression of the male towards the female which could put her well being in danger. Six Flags Worlds of Adventure does not have the facilities to separate the whales in accordance to the Animal Welfare Act (AWA) should separation be necessary.

· Freedom of Information Act (FOIA) submitted by Earth Island Institute

NMFS has failed to provide information requested under FOIA regarding this application. Such information is necessary to comment on the application file.

· Procedural Deficiencies in Review (EII)

NMFS has failed to provide the public the minimum 30 days to comment on this application. Supplemental information from the applicant was delayed in reaching commentors and as such the required 30 day comment period has not ben made available.

· Public Hearing Request (EEI and OrcaLab)

NMFS misstates the purpose of the public hearing requirement. The question is not whether the NMFS believes the issues "can be addressed in writing", but the opportunity for the affected public to express their views and opinions. This application is highly controversial; it has aroused public antipathy; it calls for a decision that will set MMPA precedent and presents complex issues.

· Violation of MMPA stranding procedures (EII)

The report submitted by Dr. Geraci states there are troubling questions regarding the capture and retention in captivity of the male whale. "Individual stranded marine mammals cannot be protected and conserved, as called for under the MMPA . . ., if the standards prescribed under the Act and its regulations and guidance are not met." Furthermore, international programs that conserve marine mammals should not be allowed to profit from strandings and should follow requirements comparable to those under the MMPA. Funtime, Inc. has further failed to satisfy the prerequisite for a non-releasability finding.

Children's Comments:

During the initial public comment period, nine children from Kent City Schools wrote regarding the proposed import. Seven children stressed the entertainment value of the animals and one child expressed concern that the whales would be killed in the ocean. One child objected that the animals should be left in their natural habitat.

During the second public comment period, 301 comments from children were received supporting the application. The majority of these comments stressed the tradition, entertainment, education and economic value of the killer whales to Northeastern Ohio. Twenty-four comments from children were received against the application. These comments

stated that captivity of killer whales was inhumane.

Other Applicable Regulations

National Environmental Policy Act: Public display permits are, in general, categorically excluded from the requirement to prepare an Environmental Assessment or Environmental Impact Statement (NOAA Administrative Order Series 216-6, May 20, 1999) since, as a class, they do not have a significant effect on the human environment. Although the action is not considered controversial, approximately 40 comments were received from the public.

In reviewing the permit request, NMFS determined that public health and safety are not affected; no unique geographic area is affected; and the effects of this import are not highly uncertain, nor do they involve unique or unknown risks. Issuance of this permit will not set a precedent for future actions with significant effects, nor does it represent a decision in principal about a future consideration. There are no individually insignificant but cumulatively significant impacts associated with the proposed action, and there is no adverse affect on historic resources. The Permit requires that AWA requirements for handling and transport be met to avoid unnecessary stress and to provide sufficient veterinary care to insure the health and welfare of the animal.

NMFS, therefore, concludes that consistent with applicable criteria, issuance of the requested permit, as conditioned, is categorically excluded from the requirement to conduct further NEPA analysis.

RECOMMENDATION

The proposed importation for public display is consistent with the purposes and policies of the MMPA. NMFS has determined that Funtime, Inc., d/b/a Six Flags Worlds of Adventure 1) offers a program for education or conservation purposes that is based on professionally recognized standards of the public display community, 2) holds a license issued under 7 U.S.C. 2131 *et seq.*, and 3) maintains facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis with access not limited or restricted other than by charging an admission fee. No adverse impact to the populations or to the ecosystem as a result of the authorized activity is anticipated. For these reasons, I recommend that you sign the Permit.

cc: Stuckey

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acs draft 2/2/01; spell check 2/13/01; final 3/6/01
bcc: chron, PHF 116-1591

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

MAY 16 2002

MEMORANDUM FOR: F/PR - Donald R. Knowles

FROM: F/PR1 - Eugene T. Nitta

SUBJECT: Report on the Application for a Permit for Public Display Under the Marine Mammal Protection Act, submitted by Funtime, Inc. d/b/a Six Flags Worlds of Adventure [File No. 1004-1656]: **Recommendation for Issuance**

Abstract

Funtime, Inc. d/b/a Six Flags Worlds of Adventure requests a permit to import two killer whales (Orcinus orca), one adult female from Marineland S.A., Antibes, France and one adult male from Mundo Marino, Buenos Aires, Argentina, to Six Flags Worlds of Adventure in Aurora, Ohio. Marineland S.A. and Mundo Marino have requested Funtime, Inc. maintain these whales as loans to be incorporated into Six Flag's breeding and exhibition program.

Note that 559 public comments have been received regarding this application, and while the action of issuing an import permit for public display is generally not controversial, certain aspects regarding the original collection of the adult male killer whale, Kshamenk, are controversial and difficult to resolve based on information provided by the applicant and subsequent information provided by numerous non-governmental organizations (NGOs) during the public comment periods. We have provided attachments to this memo that provide a detailed account of the information provided regarding this issue. It is anticipated that issuance of this Permit will be controversial.

Chronology

October 27, 2001	Date of application
October 29, 2001	Application received complete
November 26, 2001	Application distributed
November 30, 2001	Application published in the Federal Register
December 31, 2001	Close of public comment period
January 9, 2002	Marine Mammal Commission comments received
January 28, 2002	Additional information requested from applicant
February 19, 2002	Additional information received complete
February 25, 2002	Public comment period re-opened in Federal Register
March 25, 2002	Marine Mammal Commission comments received
March 27, 2002	Public comment period extended in Federal Register
April 11, 2002	Close of extended public comment period

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Comments

The Marine Mammal Commission (MMC) recommended approval of the application provided:

- The Service, in consultation with the Animal and Plant Health Inspection Service (APHIS), is satisfied that the applicant's plans and facilities for transport and maintenance of the requested animals are adequate to provide for their health and well-being; and

- The Service is satisfied that the applicant's education program is acceptable (i.e., that a program is in place as a component of the proposed public display; that the basic message of the program is accurate and consistent with the policies of the Marine Mammal Protection Act; and that the program includes accurate information about the life history and other aspects of the species).

Although the applicant meets the minimum space requirements under existing regulations, the MMC is concerned that the facilities are somewhat small for the permanent maintenance of killer whales and suggests that APHIS in consultation with the Service and other interested parties, work to publish proposed changes to the minimum space requirements for killer whales. The MMC believes that the activities for which it has recommended approval are consistent with the purposes and policies of the Marine Mammal Protection Act (MMPA).

During the second review of the application, the MMC noted that:

- The collection of the male as a stranded animal appears to be consistent with Argentinean law. Concerns that the animal was taken as a forced stranding have not been sufficiently supported by documented evidence;

- The Argentinean government's "C" certificate appears to confirm that the male is not appropriate for release to the wild, although it does not specifically indicate that the government determined that the release of the animal was not possible;

- The French government has issued a CITES export permit for the female killer whale and it is expected that the Argentinean government will be issuing a CITES export permit for the male shortly;

- Little information exists concerning (1) the physiology and genetic composition of southern stock of killer whales, and (2) the extent to which animals from the southern stock differ physiologically and genetically from those in the Icelandic stock. The Service should therefore be satisfied that breeding the requested animals is appropriate;

- A description of the status of the killer whale stock in the waters off Argentina has been provided, although the source of the information is unclear; and

- The attending veterinarian's statement concerning the transport and care of the animals appears to be adequate.

MMC reiterated that the facilities may be somewhat small for the permanent maintenance of killer whales. The MMC recommends that the Service consult with APHIS regarding arrangement for maintenance should separation of the animals be necessary for any reason. The MMC further reiterated its recommendation that APHIS in consultation with the Service and other interested parties, work to publish proposed changes to the minimum space requirements for killer whales.

NMFS Response: The Service (NMFS) has consulted with APHIS and is satisfied that the applicant's plans and facilities for transport and maintenance of the requested animals are adequate to provide for their health and well-being. NMFS has also consulted with APHIS regarding arrangement for maintenance should separation be necessary (see below). NMFS will be forwarding MMC comments to APHIS regarding minimum space requirements. Funtime, Inc. is an American Zoo and Aquarium Association (AZA) accredited institution as well as a member of the Alliance of Marine Mammal Parks and Aquariums (Alliance). Notice to accept professional standards of the AZA and Alliance was published in the Federal Register on October 6, 1994 (59 FR 50900). As such, NMFS is satisfied that the applicant offers a sufficient program for education and conservation.

NMFS concurs that the Argentinean government's "C" certificate appears to confirm that the male is not appropriate for release to the wild, although it doesn't specifically indicate that the government determined that the release of the animal was not possible. The Argentinean government has supplied a statement that no laws existed regarding collection in 1992, when the animal was collected, and he has been maintained legally by Mundo Marino.

NMFS concurs that concerns that the animal was taken as a forced stranding have not been sufficiently supported by documented evidence. However, it is important to note that the circumstances surrounding the capture of this animal, failure to attempt to refloat the animal, and failure to release the animal after a four month recovery period are not consistent with U.S. stranding response practices. Therefore, while no clear evidence exists that this was a forced stranding for purposes of collection for public display, this issue remains unclear. Without clear evidence to determine this was a forced stranding and therefore possibly inhumane (50 CFR 216.12 (c) (5)), NMFS cannot deny issuance of importation of the male.

A description of the status of the Patagonian killer whale stock in the waters off Argentina has been provided. However, this does not cover the resident population of killer whales that Kshamenk allegedly came from. So, NMFS concurs that little is known about the population of killer whales in the Samborombón Bay area. In addition, Section 102(b)(3) of the MMPA prohibits the importation of any marine mammal taken "*from a species or a population stock which the Secretary has, by regulation published in the Federal Register, designated as a depleted species or stock.*" As the Argentinean killer whale populations or stocks have not been designated by the Secretary as depleted, the import is not prohibited by this provision of the MMPA.

The USDA Animal and Plant Health Inspection Service (APHIS) does not object to the issuance of this permit.

- APHIS believes that the activities are consistent with the purposes and policies of the Animal Welfare Act (AWA). The USDA license under the AWA for Funtime, Inc. is current, and there are no additional AWA concerns that need to be addressed with this application. The provisions of the transportation plan as described are in compliance with the requirements of the AWA.

- It was noted that Pools 2 and 4 cannot be used as primary enclosures for these animals. The animals must have a health certificate for importation and that copies of all prior medical records must be on file at the facility. A transport plan should be on file at the facility prior to transport. The attending veterinarian must determine transport sequence, acclimation times and quarantine procedures.

During the second review of the application, APHIS did not have further objections to the issuance of the permit as subsequent conversations with the applicant successfully addressed previous concerns.

In addition, APHIS submitted comments on May 13, 2002, addressing questions raised in NMFS' letter dated January 28, 2002. In their response, APHIS clarified that the "*receiving facility meets AWA standards, is licensed, and has the space and personnel to handle the animals. It is beyond the scope of our mandate to comment on the behavioral disposition of the animals involved. We have never observed them. The facility has the space to separate the animals in case there are compatibility issues. I am unaware of there being ongoing problems of incompatibility among killer whales in captivity.*"

APHIS further stated "*it is beyond the scope of our jurisdiction to regulate or comment on the potential breeding of animals as long as there is sufficient space available for offspring. I provide a biologist's viewpoint on advantages of cross-breeding (increase or hybrid vigor) and state that, as it is unlikely that any of the animals will be released to the wild in the future (at least not without an MMPA permit in which such concerns can be addressed) and there is no chance of accidental release from the facility, this concern should be a nonissue.*"

NMFS response: The applicant has been informed in the cover letter of the Permit that Pools 2 and 4 cannot be used as primary enclosures for these animals. Special Condition B.1.d. requires that the travel plan be documented at the facility, and the animal must be accompanied by a health certificate signed within 10 days of the transport. The applicant has verified that a transport plan is on file at the facility, and the attending veterinarian has determined the transport sequence, acclimation times, and quarantine procedures (received February 12 and 19, 2002).

Public Comment Period Ending December 31, 2001: A total of forty-five letters were received during the public comment period ending December 31, 2001, with regard to this application.

In Support: The Alliance of Marine Mammal Parks and Aquariums (Alliance) and four local educators representing two school districts supported the application on its educational merits. The Alliance further supported the application based on the breeding potential and genetic diversity of these animals to the North American captive population.

In Opposition: Thirty-one comments were received in opposition to the permit application. Sixteen were from individuals and fifteen represented non-governmental organizations (NGO's) including Animal Protection Institute (API), Cetacean Society International (CSI), Coalition for No Whales In Captivity, Earth Island Institute (EII, on behalf of themselves, In Defense of Animals and People for the Ethical Treatment of Animals), Humane Society of Canada (HSC), Humane Society of the United States (HSUS), OrcaLab, Orca Network (Berta), Orca Network (Garrett), Sea Sanctuary, Inc., SOS Dauphins, Whale and Dolphin Conservation Society (WDCS), Wild Earth Foundation (WEF), World Society for the Protection of Animals (WSPA), and ZooCheck Canada, Inc.

These comments encompassed the following arguments against the importation:

1) **Captivity is Inhumane**: Numerous individuals and NGO's offered comments that captivity is cruel and inhumane for this species. Their size, large home ranges, and complex social structure make this species unsuitable for captivity. In addition, captivity decreases life expectancy (average survival time of six years) of this normally long-lived species (> 50 years in the wild). The female is currently maintained in a matrilineal group which is similar to group structure in the wild, to remove her from this group would be inhumane.

   NMFS response: These comments are beyond the scope of issues to consider under the MMPA.

2) **Captive Breeding**: Individuals stated that captive breeding is not a compelling justification to import the whales in light of adequate population numbers in the wild.

NMFS response: This comment is beyond the scope of issues to consider under the MMPA.

3) **Educational Value**: The expanding use of alternative modes of education including viewing in the wild, video, film and print does not justify captivity of this species. The entertainment value of these animals does not translate into educational value. Others contended that the educational standards requirement for public display cannot be evaluated, monitored or enforced, as the "professionally recognized standards" are those that have been provided by the industry to be regulated.

NMFS response: The MMPA authorizes importation and holding marine mammals in captivity for public display purposes (16 U.S.C. 1374; Section 104 (c)). NMFS recognizes that the public display industry is largely self-regulated under the 1994 Amendments to the MMPA, including that the "professionally recognized standards" for educational requirements for public display have been established by the public display industry.

4) **Conservation Contributions**: NGO's suggested that the flow of useful information from captive studies to wild studies is generally unidirectional, with captive marine mammals benefitting more from wild research than vice versa.

NMFS response: This comment is beyond the scope of issues to consider under the MMPA.

5) **Concern Regarding Public Safety and Animal Care**: Comments were received stating that Six Flags has a questionable track record regarding public safety and animal care. Six Flags does not have a history of successful breeding nor do they have a history of successfully maintaining this species. Several commenters noted that two orcas in Six Flags' care died within the last 18 months and they suggested that Six Flags does not have the expertise, facilities and resources to successfully maintain killer whales. One NGO provided affidavits of complaints from former Six Flags Marine World (California) employees regarding instances of animal abuse. The adult male has been reported as aggressive and may constitute a threat to the trainers or the public.

NMFS response: These comments are beyond the scope of issues to consider under the MMPA and are covered under the AWA. These concerns have been addressed by APHIS (see APHIS comments above).

6) **Sub-standard Facilities and Lack of Animal Welfare Protection Legislation**: Imports from sub-standard facilities and countries with no animal welfare legislation should be denied to discourage the breeding and maintenance of captive marine mammals under such conditions.

NMFS response: This comment is beyond the scope of issues to consider under the MMPA.

7) **Supporting Subsequent Captures**: New imports of killer whales for public display will provide a demand leading to subsequent capture of more animals from the wild and they would be traded as "breeding loans." It is probable that the male whale will be replaced by another animal in the near future, which could be traded to another marine mammal park.

NMFS response: The applicant has stated that the importation of a killer whale to the U.S. will not result in the collection of a killer whale in the wild. Current Argentinean law prohibits the capture of marine mammals by forced stranding. As such, it would be unlikely that such an event would take place at this time in Argentina. Permit applications are reviewed by NMFS on a case-by-case basis, in which the legality and the humaneness of the capture are considered. Under MMPA Section 102 and current regulations (50 CFR 216.12 (c)(5)), among other criteria, NMFS must demonstrate that the original "take" of the marine mammal from the wild was inhumane in order to determine that it is unlawful under the MMPA to import the marine mammal. While there is considerable controversy surrounding the circumstances of the adult male collection from the wild, there is not substantial evidence to support that this was a forced stranding, and therefore potentially inhumane, depending on the exact methods of capture. NMFS recognizes the potential for a forced stranding to occur under the guise of a natural stranding, but without substantial evidence to show that a stranding was "forced," NMFS would not be able to determine that the import of such an animal is unlawful under the MMPA. (See Attachment 3 regarding the original collection of Kshamenk for further information.)

8) **Foreign Legal Issues**: Killer whales are listed as Appendix II under CITES. Accordingly, the export must be permitted by the country of export. CITES requires that a country's Management Authority is satisfied that the animal was not obtained in violation of the exporting country's laws. If the adult male was captured in Argentina as the result of a forced stranding, and thus was taken illegally and inhumanely, an export permit cannot be granted (see attachments regarding original collection of adult male killer whale, Kshamenk). Killer whales are also listed on Annex A of the European Community Regulations, which implement CITES. As such, export for commercial purposes, and the NGOs consider public display a commercial purpose, is not permitted.

NMFS response: The French government issued the CITES export permit for the adult female on April 4, 2001. CITES also requires that a country's Management Authority determine that an export "*...will not be detrimental to the survival of that species*" (Article IV. 2. a.). Furthermore, CITES requires that a country's Management Authority is satisfied that "*...any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment*" (Article IV. 2. c.). The Argentinean

government has supplied a statement to NMFS that no laws existed regarding collection in 1992, when the animal was collected, and he has been maintained legally by Mundo Marino. Special Condition B.1.e. requires the proper CITES export permits be obtained prior to importation of these animals into the United States (see CITES analysis below).

9) **U.S. Responsibility**: As the popularity of marine mammal parks increases internationally, so does the demand for animals. The public display industry in Japan is expanding and looking to Russia to provide killer whales for their parks. The U.S. was one of the first countries to begin this trend and now contains one of the largest public display industries in the world. As a major consumer of captive marine mammals, approval or disapproval of permits has considerable implications. It is time for the U.S. to take responsibility for its part in shaping the nature of this industry.

NMFS response: The MMPA provides NMFS with authority to issue permits for the importation and holding marine mammals in captivity for public display purposes (16 U.S.C. 1374; Section 104 (c)).

10) **NMFS' Proposed Rule**: The proposed rule regarding public display of marine mammals has not been published as a final rule. Decisions regarding permits for public display should be postponed until the final rule is effective.

NMFS response: NMFS has issued permits for importation of marine mammals for public display under the provisions of MMPA Section 104 prior to the proposed rule being published. The proposed rule's status has no bearing on this decision.

11) **NEPA Review**: The claim that the application can be processed under a categorical exclusion to NEPA was disputed and an Environmental Assessment should be prepared.

NMFS response: See NEPA analysis below.

Comments Regarding the Specific Animals:

12) **Release of Male to the Wild in Argentina**: The status of the population of killer whales inhabiting the waters of Argentina is suggested to be small and vulnerable. Every attempt should be made to release the male back to the wild.

NMFS response: The applicant provided information regarding the status of the population of killer whales inhabiting the waters off Argentina. Given the length of time this male has been in captivity, it is not likely to be released to the wild. Mundo Marino has indicated that this is a breeding loan and the animal may be returned to Argentina for public display after successful breeding has occurred.

13) **Stranding in Argentina**: Many groups suggested that the male killer whale's stranding was forced and constitutes an illegal capture from the wild. This animal's releasability was not assessed and release should have been considered.

NMFS response: The Argentinean government provided a statement to NMFS that no laws existed regarding collection in 1992, when the animal was collected, and he has been maintained legally by Mundo Marino. Also, the Argentinean government has indicated that in the absence of any credible proof, they cannot act on any charges regarding an alleged forced stranding. NMFS found that this is adequate documentation to determine that this animal was not obtained in violation of Argentinean law. NMFS recognizes the commenters have noted discrepancies in the records provided by the applicant regarding the collection of the animal, however, there is not substantial evidence for NMFS to determine that import of this animal is unlawful under the MMPA based on allegations that this animal was captured as a result of a forced stranding (see attachments regarding original collection of adult male killer whale, Kshamenk).

14) **Aggressive Behavior of Male**: There have been reports that the male is unmanageable and poses a threat to the staff and the general public.

NMFS response: This comment is beyond the scope of issues to consider under the MMPA and is covered under the AWA. This concern has been addressed by APHIS (see APHIS comments above).

15) **Incompatibility of the Animals**: As these two animals are from different populations, incompatibilities may arise resulting in aggression of the male towards the female. The public display industry has a history of failing to handle situations of incompatibility adequately.

NMFS response: These comments are beyond the scope of issues to consider under the MMPA and are covered under the AWA. These concerns have been addressed by APHIS (see APHIS comments above).

16) **Health of the Male**: The male is reported as suffering from stomach problems. The length of transport may exacerbate his health problems, as well as the climate change from Argentina to Ohio, could lead to his death.

NMFS response: APHIS has recommended the inclusion of Special Condition B.1.d. in the permit requiring that the travel plan be documented at the facility, and that the animal must be accompanied by a health certificate signed within 10 days of the transport.

Breeding Concerns:

17) **Age of the Animals**: These animals are too young to breed and have not yet reached sexual maturity. The female has not yet reached breeding age and may be impregnated prematurely, jeopardizing her health. Her age may cause her to be treated aggressively by the male, putting her well-being at risk.

18) **Population Concerns**: These animals are from different populations and cross-breeding populations defeats the purpose of captive breeding and is not suggestive of natural breeding behavior/conditions. The implications and consequences of breeding animals from different populations must be adequately addressed.

19) **Conservation Aspects**: The breeding program is not for conservation proposes as the offspring will not be able to be released to replenish wild stocks. The applicant has failed to demonstrate the conservation value of a breeding program.

20) **Breeding History**: Historically, killer whales that give birth without other female company fare poorly. The historical information would defeat the purpose of the application (to propagate killer whales). The public display industry has a poor record of successfully raising progeny and is failing to produce a sustainable population.

NMFS response to all Breeding Concerns: These comments are beyond the scope of issues to consider under the MMPA and are covered under the AWA. Most of these concerns have been addressed by APHIS (see APHIS comments above).

21) **Female as a Solitary Animal**: A permit for the female should not be issued until the male's status is resolved. Should the permit for the male be denied, it would not be appropriate to import the female to be maintained as a solitary animal.

NMFS response: The Argentinean government has supplied a statement that no laws existed regarding collection in 1992, when the male was collected, and he has been maintained legally by Mundo Marino. There is not substantial evidence to demonstrate that the male was forced to strand. Therefore, NMFS has determined to the extent of its ability that there should be no issues that need to be resolved regarding the male, and the female should not be maintained as a solitary animal.

22) **Transport**: The stress, discomfort, and the potential for injury of the proposed transports constitutes an unnecessary risk to the health and welfare of these animals. Historically, these transports encounter unexpected delays and the animals suffer unnecessary stress and injury.

NMFS response:. NMFS has consulted with APHIS regarding these concerns and concurred that the methodology of transport is consistent with requirements under the MMPA and AWA (see APHIS comments above).

Additional Information Requested: Based on the substantive comments received during the initial public comment period ending December 31, 2001, clarification of the following items were requested from the applicant on January 28, 2002:

23) Further documentation of the circumstances regarding the beaching of the male killer whale and subsequent attempts for release;

24) A statement regarding CITES export permits;

25) Additional information regarding the North American cooperative breeding program for killer whales referenced in the application;

26) A description of the status of the killer whale stock in the waters off Argentina;

27) The duration of truck transport from each of the facilities to the airport, transport from the airport to Six Flags Worlds of Adventure and the total flight time; and

28) A statement from the attending veterinarian concerning transport sequence, acclimation times and quarantine procedures.

Information responding to this request was received from Six Flags on February 19, 2002. NMFS distributed it to public commenters concurrently with the publication of the second comment period in the Federal Register.

Public Comment Period Ending April 11, 2002: A total of five hundred and fourteen letters were received during the public comment period ending April 11, 2002, with regard to this application.

In Support: One hundred and six comments were received in support of this application including numerous educators, the governor of Ohio, the Bainbridge Township Trustees, the Alliance of Marine Mammal Parks and Aquariums, the American Zoo and Aquarium Association's Marine Mammal Taxon Advisory Group and the Harbor Branch Oceanographic Institution. Note: Six Flags actively solicited input from its constituents via the internet.

29) **Entertainment, Education and Economic Value (tourism)**: Numerous commenters stressed the value of these animals for entertainment, education and economic reasons.

30) **Geographic Proximity to an Ocean**: The facility is in Ohio which is geographically distant from the ocean providing many members of the community their only opportunity to see a killer whale in person.

31) **Tradition of Killer Whales in Northeastern Ohio**: As killer whales were a foundation of the facility as Sea World of Ohio, the importation of these whales would continue a tradition of killer whales in Northeastern Ohio set by the previous owners.

32) **Breeding Program**: Several comments focused on the expansion of the breeding program by inclusion of these individual whales to the North American captive population.

33) **Experience of Personnel and Facilities**: The personnel currently at Six Flags Worlds of Adventure previously worked at the facility when it was Sea World of Ohio. These individuals have experience maintaining killer whales in captivity. The facility in question previously maintained killer whales while under Sea World management and have the facilities to provide for the maintenance of these animals.

34) **Companionship for the Male from Argentina**: The male killer whale in Argentina is currently maintained as a solitary animal. Transport to the Six Flags Worlds of Adventure facility with the female from France would provide for conspecific companionship.

35) **Unstable Political Situation in Argentina**: The care of the male killer whale in Argentina might deteriorate should the political situation in Argentina continue to be so unstable.

36) **Release of Captive Animals**: Releasing captive marine mammals into the wild is experimental and attempts have been unsuccessful.

37) **Additional Comments in Support of the Application**: The Alliance reiterated their support for the application. Six Flags Worlds of Adventure is a member in good standing with the Alliance and represents members of a community of expertise and knowledge in the care of marine mammals. The Alliance stressed the educational value of these animals, the opportunity for research and incorporation into a breeding program. The breeding population would benefit by the addition of these animals to the breeding population and their contributions to the genetic diversity of the overall captive population.

The American Zoo and Aquarium Association's Marine Mammal Taxon Advisory Group supplemented their letter of support provided by the applicant with additional information addressing comments received during the first comment period. The killer whale exhibit at Six Flags Worlds of Adventure currently meets USDA standards for up to four killer whales under the Animal Welfare Act, therefore concerns regarding size for two animals have been addressed. They argue that the female is at a reproductive age considering that the youngest captive born killer whale to give birth was 8 years old and the female in question is currently 9 years old.

The Harbor Branch Oceanographic Institution supports the application as the current population of killer whales in captivity is small and importation and subsequent breeding of the male would provide for genetic contribution of a unrelated male enhancing genetic stability. There is no biological justification for excluding the male killer whale as scientific studies do not delineate *Orcinus orca* sub-species. The current North American zoological populations contain animals from different geographic locations which have successfully breed and produced offspring. Each of the animals proposed for importation are in a non-breeding environment. The male is held as a solitary animal and the female cannot be maintained on a long-term basis with related males at her facility. Importation of these animals would provide for their long-term social needs and allow them to contribute to the captive population through the breeding program.

Opposing Comments: One hundred and seven comments were received against this application, of which sixty-nine letters referenced and supported the comments of the World Society for the Protection of Animals (WSPA). Six NGO's including Cetacean Society International (CSI), Earth Island Institute (EII, on behalf of themselves, In Defense of Animals and People for the Ethical Treatment of Animals), the Humane Society of the United States (HSUS), OrcaLab, the Whale and Dolphin Conservation Society (WDCS) and the Wild Earth Foundation (WEF) provided additional comments opposing this application.

The majority of comments included in these letters include the following arguments against the importation, many of which were addressed during the first comment period:

38) **Captivity is Inhumane**: Captivity is cruel and inhumane for this species. Their size, large home ranges, and complex social structure make this species unsuitable for captivity. In addition, captivity decreases life expectancy (average survival time of 6 years) of this normally long-lived species (> 50 years in the wild). As captivity is inhumane, killer whales kept in captivity should be released back into the wild.

NMFS response: This comment has been addressed previously (see initial comment period).

39) **Companionship for the Male**: The statement that the placement of these individuals together will enhance their welfare is self-serving. It would be more appropriate, if this were the goal, to move another killer whale to Argentina where only one whale would have to endure the stress of transport. Removing the female from her family group would be a detriment to her welfare. The possibility of a mating occurring between her and her father can be prevented in a number of ways.

NMFS response: This comment is beyond the scope of issues to consider under the MMPA and AWA.

40) **Entertainment is not Education**: The entertainment value of these animals does not translate into educational value. The information provided by the public display industry is minimal and misleading at best. Others contended that the educational requirement for public display can not be evaluated, monitored or enforced as the "professionally recognized standards" are those that have been provided by the industry to be regulated.

NMFS response: This comment has been addressed previously (see initial comment period).

41) **Import Supporting Commercial Activity**: These imports are requested for commercial purposes, and the commenters constituted public display was a commercial purpose, to provide an expected attraction to increase attendance at Six Flags Worlds of Adventure. Six Flags Worlds of Adventure is a for-profit theme park mainly interested in the commercial value of these animals.

NMFS response: The MMPA provides NMFS with authority to issue permits for the importation and holding marine mammals in captivity for public display purposes (16 U.S.C. 1374; Section 104 (c)).

42) **Health of the Male**: The male is reported to be unhealthy. The length of transport may exacerbate his health problems and lead to his death.

NMFS response: This comment has been addressed previously (see initial comment period).

43) **Aggressive Behavior of the Male**: There have been reports that the male is unmanageable and may pose a threat to the staff and the general public.

NMFS response: This comment has been addressed previously (see initial comment period).

44) **Supporting Subsequent Captures and Forced Strandings**: Imports of killer whales for public display will lead to subsequent captures of more animals from the wild to be traded as "breeding loans". It is probable that the male whale will be replaced by another animal in the near future which could be traded to another marine mammal park in the future.

NMFS response: This comment has been addressed previously (see initial comment period).

45) **Violation of CITES**: Killer whales are listed as Appendix II under CITES. Accordingly, the export must be permitted by the country of export. CITES requires that the Management Authority is satisfied that the animal was not obtained in violation of

Argentinian laws. If this animal was captured as the result of a forced stranding and thus was taken illegally and inhumanely, any export permit obtained would be invalid.

NMFS response: This comment has been addressed previously (see initial comment period).

46) **Legal Actions in Argentina**: The NGOs have been notified of pending legal actions in Argentina. These legal actions have not concluded and could have bearing on a determination of the legality of the male's stranding and subsequent transfer under CITES and the MMPA provisions. The delay in the CITES export permit suggests that the Argentinean government may be waiting for a decision from NMFS before making the CITES determination. It is understood that the legal process in Argentina requires that the export permit must be applied for and signed before legal review and a finding by a Federal Argentinean judge can occur. If the export permits are secured, this animal may be exported before the conclusion of the legal proceeding allowing Six Flags to potentially import this animal contrary to Argentinean law should the judge find that the capture was illegal.

NMFS response: The Argentinean government has supplied a statement that no laws existed regarding collection in 1992, when the male was collected, and he has been maintained legally by Mundo Marino. In addition, the Argentinean government has provided a statement that necessary administrative proceedings are being conducted and they have no information regarding any legal action initiated against those proceedings. NMFS has inquired whether the Argentinean government needs any further information from NMFS, and forwarded copies of the application, including additional information, for their consideration.

47) **Stranding in Argentina**: The additional comments submitted by Funtime, Inc. are inadequate to explain the circumstances regarding the stranding of the male in Argentina. It has been suggested the male was obtained through forced stranding (or opportunistic capture while feeding) and release of this "stranded" animal has not been attempted nor has an adequate assessment regarding releasability been made. The stranding event has not been supported by video or photographs which is considered standard practice. Statements concerning the animal's condition at time of "stranding" is not consistent with a need to transfer an animal to captivity for rehabilitation. Commenters question the judgement of Mundo Marino in bring the whale into captivity given his condition and the humaneness of this handling during the transport. They further question why this animal was not able to escape at high tide as he was the smallest of the whales which stranded. They dispute the validity of the testimonies of the fishermen given the length of time that has passed, their affiliation with Mundo Marino, the inconsistencies between the statements and the omission of important information and other key witnesses. Commenters also noted that on the "C" certificate, the majority of the marine mammals at Mundo Marino have been obtained through stranding events. Furthermore, the Mar del Plata Aquarium requested orca capture permit citing forced stranding as the method of

capture in the same area where the male was taken. Capture by forced stranding is in violation of Argentinean law.

NMFS response: Comments regarding the legality and humaneness of the original collection of the animal have been addressed previously. In addition, see attachments regarding original collection of adult male killer whale, Kshamenk.

48) **Retention of the whale in Argentina**: Commenters note that there is an absence of documentation regarding the decision to maintain the male permanently in captivity. The statement provided by Bastida contains biased opinions of this case and contains inaccuracies regarding previous releases of cetaceans. As the former director of Mundo Marino Foundation, his objectivity as an independent analyst should be suspect.

NMFS response: See attachments regarding original collection of adult male killer whale, Kshamenk.

49) **Definitive Possession in Argentina**: As killer whales are considered a federal natural resource and cannot be transferred to other individuals, commenters question the legality of the import. This question is being considered in legal actions taking place in Argentina. The "C" certificate submitted as evidence of possession lacks an authorization number and contains various discrepancies.

NMFS response: Comments regarding the proceedings in Argentina have been addressed previously. In addition, see attachments regarding original collection of adult male killer whale, Kshamenk.

50) **Concern regarding Animal Care and Facilities**: Six Flags management has failed to demonstrate that it can provide for the health and well being of orcas. Two orcas maintained at Six Flags Marine World have died in the last 18 months. There is additional concern that the size of the facility where the killer whales would be maintained is to small to adequately meet their needs.

NMFS response: This comment has been addressed previously (see initial comment period).

51) **Quarantine Procedures**: The statement from the attending veterinarian concludes that a formal quarantine procedure will not be necessary upon importation. Although Six Flags Worlds of Adventure will be able to physically separate these animals with barriers, they lack the isolation capabilities to separate the water within the facility. Given that the male may have been exposed to pathogens prior to captivity and the lack of a quarantine period, the potential to infect the female with an unknown pathogen is greatly increased.

NMFS response: This comment is beyond the scope of issues to consider under the MMPA and is covered under the AWA. This concern have been addressed by APHIS (see APHIS comments above).

52) **Adverse Impact on Wild Stocks**: There is not enough evidence provided by the applicant that this activity will not have an adverse impact on the wild stock of killer whales in Argentina. The statement provided fails to mention the author, his/her credentials and references for the information.

NMFS response: Little information is known about the status of killer whale population(s) in the Samborombón Bay area. In addition, Section 102(b)(3) of the MMPA prohibits the importation of any marine mammal taken "*from a species or a population stock which the Secretary has, by regulation published in the Federal Register, designated as a depleted species or stock.*" As the Argentinean killer whale populations or stocks have not been designated by the Secretary as depleted, the import is not prohibited by this provision of the MMPA.

53) **Age of the Animals**: There is a dispute as to the age of the male maintained in Argentina which may have implications regarding maturity and the determination of non-releasability. The female is very young and experts do not feel she is a suitable mate. A premature pregnancy could put her health in danger.

NMFS response: The issue of the age of the female has been previously addressed (see initial comment period). See attachments regarding original collection of adult male killer whale, Kshamenk.

54) **CITES Export Permit from France**: Killer whales are listed on Annex A of the European Community Regulations which implement CITES. As such, export for commercial purposes including public display is not permitted and the export permit should be considered invalid.

NMFS response: This comment has been addressed previously (see initial comment period).

55) **Solitary Animal**: A permit for the female should not be issued as it would not be appropriate to import the female to be maintained as a solitary animal.

NMFS response: This comment has been addressed previously (see initial comment period).

56) **Transport**: The stress, discomfort and the potential for injury of the proposed transports constitutes an unnecessary risk to the health and welfare of these animals. There are also no additional assurances or documentation to minimize the stress to the animals given the transport will occur during warmer weather.

NMFS response: This comment has been addressed previously (see initial comment period).

57) **Breeding Concerns**: These animals are from different populations and cross-breeding populations defeats the propose of captive breeding and is not suggestive of natural breeding behavior/conditions. The implications and consequences of breeding animals from different populations have not been adequately addressed. The breeding program is not for conservation proposes as the offspring will not be able to be released to replenish wild stocks. The World Conservation Union (IUCN) specifically states that "*reintroduction to the wild should be the ultimate objective of all captive breeding programs*". The applicant has failed to demonstrate the conservation value of a breeding program or its dependence to the education program. Transport of the male is not necessary to obtain research or breeding goals. Research regarding the physiology and genetics of this animal can be conducted in Argentina. Breeding goals can be reached through artificial insemination and sperm banking.

NMFS response: The first comment has been addressed previously (see initial comment period). The comment regarding ICUN breeding programs is not applicable to the public display of marine mammals under the MMPA.

58) **Incompatibility of the Animals**: As these two animals are from different populations, incompatibilities may arise resulting in aggression of the male towards the female which could put her well being in danger. Six Flags Worlds of Adventure does not have the facilities to separate the whales in accordance to the Animal Welfare Act (AWA) should separation be necessary.

NMFS response: This comment has been addressed previously (see initial comment period).

59) **Freedom of Information Act (FOIA) request submitted by Earth Island Institute**: NMFS has failed to provide information requested under FOIA regarding this application (i.e., public comments). Such information is necessary to comment on the application file.

NMFS response: FOIA is a separate process from the permit process and NMFS is processing the FOIA request in accordance with FOIA. As it does for all permit applications and, as provided by the MMPA, NMFS provided notice of the application and invited public comment. NMFS provided Earth Island Institute with a copy of the permit application. Additional information from the applicant regarding the application was provided to Earth Island Institute.

60) **Procedural Deficiencies in Review**: NMFS has failed to provide the public the minimum 30 days to comment on this application. Supplemental information from the applicant was delayed in reaching commenters and as such the required 30 day comment period has not been made available.

NMFS response: NMFS took this into consideration and extended the second comment period from March 27, 2002, to April 11, 2002, allowing an additional two weeks to review the additional information. NMFS determined that this was a reasonable amount of time to add to the comment period to accommodate any delays in the mail system.

61) **Public Hearing Request**: NMFS mis-states the purpose of the public hearing requirement. The question is not whether the NMFS believes the issues "*can be addressed in writing*," but the opportunity for the affected public to express their views and opinions. This application is highly controversial; it has aroused public antipathy; it calls for a decision that will set MMPA precedent and presents complex issues.

NMFS response: The public was clearly provided the opportunity to express their views and opinions, as evidenced by the public response received, a total of 556 comments. Additionally, two public comment periods were provided, and the second public comment period was extended.

62) **Violation of MMPA Stranding Procedures**: The report submitted by Dr. Geraci states there are troubling questions regarding the capture and retention in captivity of the male whale. "*Individual stranded marine mammals cannot be protected and conserved, as called for under the MMPA . . ., if the standards prescribed under the Act and its regulations and guidance are not met.*" Furthermore, commenters were concerned that international programs that conserve marine mammals should not be allowed to profit from strandings (in accordance with 50 CFR 216.27 (c) (4)) and should follow requirements comparable to those under the MMPA. Funtime, Inc. has further failed to satisfy the prerequisite for a non-releasability finding.

NMFS response: NMFS must determine that the collection and holding of the adult male was legal under Argentinean laws, which has been done. Because the animal is being imported under Section 104 (c) and not taken under Section 109 (h) of the MMPA, the provisions of the MMPA related to strandings do not apply. However, NMFS does consider Dr. Geraci's comments valuable insight to the assessment of the situation and how the adult male may have been collected and determined to be held for public display. The remuneration restriction under 50 CFR 216.27 (c) (4) is not applicable as this animal is being imported as a public display animal under Section 104 (c) as opposed to Section 109 (h) of the MMPA and was previously deemed non-releasable and held captive in Argentina in accordance with applicable Argentinean law.

Children's Comments: During the initial public comment period, nine children from Kent City Schools wrote regarding the proposed import. Seven children stressed the entertainment value of the animals and one child expressed concern that the whales would be killed in the ocean. One child wrote that the animals should be left in their natural habitat. During the second public comment period, three hundred and one comments from children were received supporting the application. The majority of these comments stressed the tradition, entertainment, education and

economic value of the killer whales to Northeastern Ohio. Twenty-four comments from children were received against the application. These comments stated that captivity of killer whales was inhumane.

NMFS response: The comments that captivity of killer whales is inhumane are beyond the scope of issues to consider under the MMPA.

Other Applicable Regulations

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES): The requested species, Orcinus orca, is listed on Appendix II of CITES. Special Condition B.1.e. requires CITES export permits from Argentina and France prior to import. The French government issued the CITES export permit for the adult female on April 4, 2001. Prior to providing an export permit for an Appendix II species, a country must make findings regarding: 1) the impact of the export on the survival of that species; 2) the collection of an animal was consistent with domestic laws; and 3) the shipment of an animal is done in a way that minimizes the risk of injury, damage to health or cruel treatment.

National Environmental Policy Act: Scientific research and enhancement permits are, in general, categorically excluded from the requirement to prepare an Environmental Assessment or Environmental Impact Statement (NOAA Administrative Order Series 216-6, May 20, 1999) since, as a class, they do not have a significant effect on the human environment. Although the action of importation of a marine mammal for public display is generally not considered controversial, 556 comments were received from the public. During the comment period, one reviewer commented that an Environmental Assessment was warranted. NMFS considered this recommendation, along with the complete permit application materials and additional comments received, but ultimately made a final determination that an Environmental Assessment was not warranted. The reasons for this final determination included:

1) The action of importing a marine mammal for public display is generally not controversial and does not involve new techniques;
2) The techniques are considered standard for transporting marine mammals;
3) The location of this action is not generally not relevant to other marine mammals in the wild, as the individual animals involved are captive;
4) The proposed activities do not involve unique risks with highly uncertain outcomes.
5) Public health and safety are not affected;
6) Issuance of this permit will not set a precedent for future actions with significant effects;.
7) There are no individually insignificant but cumulatively significant impacts associated with the proposed action;
8) There is no adverse effect on historic resources;.
9) No endangered or threatened species or their habitat are adversely affected;

10) The Permit requires that AWA requirements for handling and transport be met to avoid unnecessary stress and to provide sufficient veterinary care to insure the health and welfare of the animal; and
11) The activity is not in violation of a Federal, State or local law for environmental protection.

NMFS, therefore, concludes that consistent with applicable criteria, issuance of the requested permit, as conditioned, is categorically excluded from the requirement to conduct further NEPA analysis.

RECOMMENDATION

The proposed importation for public display is consistent with the purposes and policies of the MMPA. NMFS has determined that Funtime, Inc., d/b/a Six Flags Worlds of Adventure: 1) offers a program for education or conservation purposes that is based on professionally recognized standards of the public display community; 2) holds a license issued under 7 U.S.C. 2131 *et seq.*; and 3) maintains facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis with access not limited or restricted other than by charging an admission fee. No adverse impact to the populations or to the ecosystem as a result of the authorized activity is anticipated. For these reasons, I recommend that you sign the Permit.

cc: Stuckey

Attachment 1 - Narrative on NMFS Decision-Making Regarding Permit No. 1004-1566-00

Given the large amount of information submitted for consideration in permit application no. 1004-1566 (559 public comments) and certain aspects of the status of the Argentine killer whale, the National Marine Fisheries Service (NMFS) felt it would be appropriate to provide an in-depth explanation of how NMFS made a final determination on this matter. This document provides background to educate those interested in the aspects of the U.S. Marine Mammal Protection Act (*16 U.S.C. 1361et seq.*) under consideration in this matter, and how all the information submitted by the applicant and the public fit into the MMPA requirements. This document, in particular, focuses on the aspects regarding the original collection of the adult male killer whale from Argentina. Please refer to the NMFS decision memo and attachments for more detail on the specific information considered, comments received and NMFS' response.

The MMPA (16 U.S.C. 1374; Section 104 (c)) and the corresponding NMFS regulations (50 CFR 216) provide that NMFS may issue a permit for the importation and holding of marine mammals in captivity for public display purposes as long as NMFS determines that the applicant: (1) offers a program for education or conservation purposes that is based on professionally recognized standards of the public display community; (2) is registered or holds a license issued under 7 U.S.C. 2131 et seq.; and (3) maintains facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis and that access to such facilities is not limited or restricted other than by charging of an admission fee. The applicant meets these requirements.

In addition, NMFS considered if the methods of the action itself are consistent with the MMPA (e.g., methods of capture, supervision, care and transportation). These criteria are covered under Section 104(c)(1) of the MMPA. As the activity of importation does not involve capture, NMFS could only look at issues of supervision, care and transportation in respect to importation. Where applicable, NMFS consulted with the Animal and Plant Health Inspection Service (APHIS) regarding issues under the mandates of the Animal Welfare Act (AWA) (e.g., adequacy of receiving facility, animal care standards once at facility, health of whales, etc.). APHIS addressed each relevant issue and found that the activities were consistent with the purposes and policies of the AWA.

NMFS also considered information regarding the original collection of the two whales. Section 102(c)(1) of the MMPA states that it is unlawful to import into the United States any marine mammal that: (1) was taken in violation of the MMPA or (2) was taken in another country in violation of that country's laws. NMFS consulted with the Argentinean government regarding the legality of captive marine mammals, and the Argentinean government supplied a statement that no laws existed regarding collection in 1992 (when the male was collected) and he has been maintained legally by Mundo Marino since that time. The female whale was born in captivity in France, an activity allowed for under French law. Therefore, NMFS determined to the extent of its ability, that the animals were not collected in violation of existing laws of their respective countries of origin.

NMFS also considered Section 102(b) of the MMPA which provides that it is unlawful to import into the United States any marine mammal that was: (1) pregnant at the time of taking; (2) nursing at the time of taking, or less than eight months old, whichever occurs later; (3) taken from a species or population stock which the Secretary has, by regulation published in the Federal Register, designated as a depleted species or stock; or (4) taken in a manner deemed inhumane by the Secretary. Based on the documents provided, neither animal was pregnant or nursing at the time of taking or comes from a stock designated as depleted under the MMPA. The adult female from Marineland S.A., Antibes, France was captive born and there are no issues of humaneness regarding the collection of this animal. The adult male from Mundo Marino, Buenos Aires, Argentina was collected from the wild during a stranding event and therefore, issues of humaneness regarding his original collection were considered.

NMFS carefully addressed the issue of whether the original collection of the male killer whale in Argentina was considered inhumane. Every document and comment received was reviewed by NMFS staff and where needed, additional information was sought. Based on all of this information, NMFS could not conclude based on substantial evidence in the record that the original collection of the male whale occurred as a 'forced stranding' which, in turn, could be considered inhumane. However, the information provided that contradicted Mundo Marino's account was not substantial enough for NMFS to determine that the original collection was inhumane. Therefore, NMFS could not determine that the importation would be unlawful under MMPA Section 102(b).

It is important to note that NMFS has the burden to demonstrate that a marine mammal was taken in an inhumane manner and thus import of that marine mammal would be unlawful under Section 102(b)(4). Based on the entire record, NMFS could not find substantial evidence that the marine mammal was taken in an inhumane manner. This is different from the issuance criteria for the import permit under Section 104 and NMFS' implementing regulations, including that the proposed activity (in this case, import) is conducted in a humane manner. The applicant has the burden to demonstrate the proposed activity (in this case, import) meets these issuance criteria.

This decision is consistent with recommendations from the U.S. Marine Mammal Commission and the Argentinean government (who previously stated that they were unable to investigate the original collection of the adult male due to a lack of credible evidence). At the time of the male's collection, no Argentinean law existed prohibiting the capture of marine mammals by forced stranding. Apparently, as a consequence, the Argentinean government was not in a position to investigate the circumstances of the collection, and therefore no information was available to either support or deny Mundo Marino's statement that the whale naturally stranded. Today, an Argentinean law (Public Law No. 25052) prohibits collection of wild orcas either with nets or through forced strandings.

NMFS believes this decision is consistent with the mandates of the MMPA as they currently stand. However, NMFS is concerned about the potential that people may take marine mammals by forced strandings and then attempt to import those marine mammals into the United States. In

order to ensure that this does not occur, NMFS intends to review applications for import with scrutiny. As each permit application to import marine mammals is approved on a case-by-case basis, this particular permit decision should in no way suggest that future imports will be authorized if there is substantial evidence of forced strandings when the animal was taken.

Text of the MMPA can be viewed on the NMFS website or a hard copy can be requested by contacting the NMFS Office of Protected Resources, Permits, Conservation and Education Division. The contact information is as follows:

National Marine Fisheries Service
Office of Protected Resources
Permits, Conservation and Education Division (F/PR1)
1315 East West Highway
Silver Spring, MD 20910
(301) 713-2289; fax (301) 713-0376
www.nmfs.noaa.gov/prot_res/laws/MMPA/MMPA.html

Attachment 2 - INFORMATION SUBMITTED BY THE APPLICANT REGARDING THE ORIGINAL COLLECTION OF THE KILLER WHALE NAMED KSHAMENK (Funtime, Inc. d/b/a Six Flags Worlds of Adventure)

The original application states (in Section V.f) that the adult male killer whale named Kshamenk was taken from the area know as Samborombón Bay, Argentina with authorization by the Argentinean government. The animal stranded on November 17, 1992, at low tide. Attempts to return the animal to the wild at the time of the stranding were unsuccessful. On November 19, 1992, the animal was rescued and transferred to Mundo Marino. The animal was 4.26 m in length and approximately one year of age. The animal was suffering from dehydration and sunburn. After lengthy medical treatments by government technicians, the killer whale was placed with a zoological institution (Mundo Marino) by the Argentinean government. The applicant further states that Mundo Marino is in compliance with Argentinean government rules and regulations as evidenced by the "C" certificate, and that the importation of this killer whale will not result in the collection of a killer whale from the wild.

Documents Provided in Original Application:

1) "C" certificate– Issued by the Secretariat of Sustainable Development and Environmental Policy indicating that Kshamenk was obtained by beaching at Bahia San Borombon swampy crab grounds (On the inventory, 20 animals were beached, 3 were incidental takes, 9 were captive births and 3 were imports).

2) Mendez Letter– Letter (not dated but fax receipt is dated October 13, 2001) in which Mr. Mendez, the Director of Mundo Marino, states that it is the intent to return stranded marine mammals to the sea and only when the animal is wounded or damaged is it transported to the veterinary center for medical care. The technicians periodically inform the government about the treatment of each animal and after treatment a determination for release is made. When release is not possible, as in Kshamenk's case, the animal stays at the zoological institution.

Additional Information Submitted by Applicant on February 12 and 19, 2002, After Original Application Was Received by NMFS:

Six Flags referenced the "C" certificate issued by the Secretariat of Sustainable Development and Environmental Policy as evidence of the legality of Kshamenk's rescue and permanent placement with Mundo Marino. Nevertheless, Six Flags provided a "Report Regarding the Stranding, Rehabilitation, and Definitive Possession of Kshamenk." In addition, several affidavits from documented eyewitnesses to the stranding and contemporaneous letters and reports from members of the scientific and marine mammal communities recommending Kshamenk be maintained in captivity are attached. A corroborating statement from the attending veterinarian directly responsible for Kshamenk's care is included. Six Flags concludes that based on the available evidence, Kshamenk's stranding, rehabilitation and placement with Mundo Marino were proper and lawful.

Documents Provided:

1) Report Regarding the Stranding, Rehabilitation, and Definitive Possession of Kshamenk– Provides a summary of the documents and reports to follow which have been incorporated into the specific relevant Sections.

2) Aerial Photographs and Nautical Chart of Samborombón Bay · The aerial photographs are intended to show that there is almost no sloping. With low-tide the inter-tidal zone is almost dry, extending several hundred meters. With high tide the water enters the channels or "rias", flooding all surfaces. The nautical chart is intended to corroborate the extensive bay coastline of approximately 240 km with very shallow waters and minimal slope. During high tide, water floods the coastal areas and marshes through inland waterways, but with low tide, because of the low depth and minimal slope, inter-tidal areas can extend kilometers. The inter-tidal areas are naturally occurring traps for cetaceans who enter the bay to feed (because of an abundance of fish), but become trapped at low tide. Excavation in the southern area of the bay where an average of one marine mammal skeleton per every 20,000 m^2 suggest that marine mammals have become trapped in this area for several hundreds of years. Furthermore, the nature of the sediments in the bay are formed mainly by non-compacted and extremely plastic materials. This mud has a very high proportion of water and its hardness is very low. These sediments are characterized by their poor wave reflective nature, which act as wave buffers, and affect the echolocation systems of cetaceans, thus increasing the occurrence of stranding.

3) Graphs of Cetaceans and Pinnipeds treated at Mundo Marino (1987 - 2002)– Because of the numerous strandings (pinnipeds, cetaceans and birds) that occur in this area, in 1987, the Marine Fauna Rescue and Rehabilitation Center (Center) was established. The work of the Center is recognized and valued by the scientific community, government authorities and academic institutions. The graphs provided indicate that killer whales are one of eleven cetacean species that have been attended to at the Center (making up 8.7% of all cetaceans, exact numbers are not given). In addition, numerous pinniped species have been attended to by the Center (exact numbers not given). A graph is provided that gives numbers of specimens attended by the Center (species not broken out) since 1987.

4) Strandings of Killer Whales in Buenos Aires Province– This list of stranded killer whales known to have stranded and not attended to by Mundo Marino or the Center illustrates that Mundo Marino is not the only institution that has responded to a stranding and that strandings are not isolated to the Samborombón Bay area, but occur along the Buenos Aires Province coastline. Mundo Marino reiterates that they only intervene when the animal in question is in need of medical attention and mention the 1996 stranding as a case in point where a female and her calf were determined to be able to free themselves with the tide and were monitored until escape with the tide was possible.

5) Stranding Chronology as outlined in the Report Regarding the Stranding, Rehabilitation, and Definitive Possession of Kshamenk (from Mundo Marino)

November 17, 1992
8:00 am - Mr. Miquel Marchi, while on his boat, saw an animal on the coast of Salinas Stream, in Samborombón Bay. He confirmed it was a killer whale stranded in the mud.
9:00 am - Mr. Marchi notified Mundo Marino by radio on his boat.
12:00 - Mundo Marino arrives and diagnoses the killer whale with serious alteration in the respiratory rate and a bad sunburn. After several hours, rescuers freed the animal from the mud and put him on an inflatable boat. During this time, his respiratory rate was seriously altered.
9:30 pm - The killer whale was put into the medical pool at Mundo Marino. Despite efforts of the staff, the killer whale died.

November 18, 1992
5:00 am - Fisherman report that four killer whales had been sighted stranded in the coast along "Ria de Ajo" mouth in the late afternoon of the previous day.
8:00 am - Mundo Marino staff was sent by boats, but had to walk the last two kilometers due to low tide. Once arriving on the scene, only one killer whale remained stranded and it was assumed that the other three whales freed themselves during high tide. The remaining killer whale (a young male, Kshamenk) showed signs of serious sunburn and was probably under deep stress. Several alternatives were analyzed to rescue this animal, but none were viable. The stranding area was an extended and flat surface covered with only 10 - 20 cm of water approximately 2 km away from the zone of deeper water. The decision was made to attend to the animal on site until the next high tide could allow the animal escape.

November 19, 1992
8:00 am - As the animal was unable to escape during the subsequent high tide, rescue tasks were started. As time passed, the animal was observed weaker and quieter and it was estimated that he had been stranded for more than 2 days.
6:00 pm - The animal was brought to Mundo Marino on an inflatable boat, where he was put into a quarantine tank.

6) Testimony of fisherman Federico Blehn (Captain of "Nueva Realidad" accompanied by Cesar Fabian Marchi and Osvaldo Oscar Puentas)– Statement indicates that on November 17, 1992, they were fishing approximately 2 miles from the coast sailing northward (approximately beginning at 2:00 pm). They threw their nets three times and continued sailing to a place situated between the mouth of "Rio de Ajo" and "Arroyo Ancho" where they sighted two big objects near the coast with movement in the water and sea birds overhead (approximately 7:00 pm). They attempted to approach in the fishing boat, but were running ground at which time they anchored the boat. Mr. Marchi and Mr. Puentas approached the objects in a smaller boat with oars. When they returned,

they reported four live killer whales (three big and one small), stranded in a muddy and sandy zone. The boat continued to San Clemente del Tuyu Port, but was unable to enter due to the low tide and had to wait until approximately 3:00 am to return to port. At 5:00 am, Mr. Blehn notified Mundo Marino, Mr. Suhr, of the animals and their location. (Testimony taken February 1, 2002.)

7) Testimony of fisherman Fabian Marchi (Sailor aboard "Nueva Realidad" accompanied by Federico Blehn and Osvaldo Puentas)– Mr. F. Marchi reiterates that the boat was fishing on November 17, 1992. After sailing for several hours, they passed near "Rio de Ajo" and saw in the distance some dark bulks, big in size, but unidentifiable. He confirms the low tide and accompanying Mr. Puertas in a boat with oars to reach the area. He verifies that there were four stranded killer whales that were very quiet as they approached. They proceeded to pour water on them because they were very dry, especially the biggest, and observed the whales moving and emitting a small whistling sound. They returned to the boat and reported the observations to Mr. Blehn, at which time it was decided to return to port to inform officials of the animals. He confirms that they reached the mouth of the "Rio de Ajo" at night, but had to wait until the water level had risen to enter the port. It was not until early November 18 that they could enter port and Mr. Blehn informed Mundo Marino about the killer whales. (Testimony taken February 1, 2002.)

8) Testimony of fisherman Osvaldo Puertas (Sailor aboard "Nueva Realidad" accompanied by Federico Blehn and Fabian Marchi)– Mr. Puertas states that on November 17, 1992 (after midday), he was aboard the boat with the above mentioned individuals fishing. He declares that some hours had passed when they reached the "Rio de Ajo". They continued northwards before reaching the "Arroyo Ancho" where they observed several bulks near the coast. Mr. Blehn anchored the boat in deeper waters, while he and Mr. F. Marchi approached in a boat with oars. They rowed approximately 2, 500 m until they reached the area where they found four killer whales (three very big and one small) near the coast. They were able to get out to the boat (depth of the water was no-more than 20 - 30 cm) and approach the animals. They walked around the animals which were very quiet and showing little movement, but occasionally moving and lifting the tail, splashing water. They stayed for a long time pouring water on the animals to wet them down. They returned to the boat to inform Mr. Blehn of the situation and proceeded to return to port. They were unable to enter port until early the next morning as there was a very low tide. At the port, they informed a person at Mundo Marino about the animals. (taken February 1, 2002)

9) Map of Samborombón Bay indicating Stranding Sites– Distance between stranding events is 6 km.

10) Letter from Mendez to Gil de Muro– Summary of the stranding events to Mr. Jose Gil de Muro, Director of the Ministry of Fishing and Agriculture Affairs dated November 24, 1992, as reported by Jose David Mendez, Director, Mundo Marino. The chronology of

the stranding events is summarized above. The report further mentions research being conducted by the Oceanarium regarding the frequency of strandings in the Samborombón Bay area. With pinnipeds, it was concluded that the causes of stranding are unique to species and individuals. Penguins strand due to problems originating from oil. It is assumed that one of the principle causes of strandings of cetaceans are the particular characteristic of the sediments (as described previously).

11) Veterinarian Report No. 1 (November 17, 1992)– Dr. Julio Daniel Loureiro, attending veterinarian, reports that the first stranded animal was male, 5.5 m long, and about 2,800 kg. This animal was observed with loosening skin on the back of the animal due to sun exposure. The following samples were taken on site:

- Urine sample - observed a great number of RBCs, presumably due to renal failure;
- Blood work - increased WBCs and eosinophils;
- Blood chemistry - increase of enzymes (GPT, GOT and LDH), probably responsive to muscle and liver lesions, typical of strandings; and
- Bacteriological analysis - feces and respiratory fluid (waiting to type bacteria).

The respiratory rate was continuously monitored and determined to be well over the normal value, sometimes reaching 100 respirations per 10 minutes. The normal value is 8 respirations in a 10 minute period. During transport and when the animal was agonizing, it presented vomit with a great number of parasites. Some of these were identified as *Anisakis,* and this finding was consistent with the values found in the blood. The animal died due to respiratory arrest.

12) Veterinarian Report No. 2 (November 19, 1992)– Dr. Julio Daniel Loureiro, attending veterinarian, reports that the second stranded animal (Kshamenk) was a part of a multiple stranding event that occurred on November 17, 1992. This animal presented with multiple skin lesions, specifically in the area of the dorsal fin. The animal also presented leukocytosis with notable eosinophylia, which could suggest a large parasite load. There was increased phosphorous in the blood. The respiratory rate was within normal values. Bacteriological cultures of fecal, respiratory fluid and urine were taken, but had not been analyzed yet. Around the clock maintenance of this animal included behavioral observations, respiratory checks, treatment of the skin lesions, and collection of fecal samples. Prognosis of this animal was guarded at the time.

13) Memorandum from Veterinary Section (Dr. Julio Daniel Loureiro, attending veterinarian) to Mendez, director, Mundo Marino, dated February 12, 1993– The skin lacerations were treated with different cicatrizant ointments and tissue regenerators, which enabled satisfactory gradual change. Oxfendazole was used to remove the parasites (suspected *Aniskasis*). Fecal samples continued to be tested for parasite load by the La Plata Veterinary Sciences Faculty, which confirmed *Anisakis* and identified *Teniae* in the samples. Staff had been unable to perform many recommended diagnostic tests on this animal (exact reason unclear). As such, the following pathologies could not be

disregarded: chronic renal insufficiency, different osseous processes, and hypoparathyroidism. The progress for diagnosis and treatment was noted as slow-going, and therefore the prognosis for this animal was still reserved at the time.

14) Letter from Dr. Richardo Bastida (Marine Mammal Task Group Director) to Mendez (Director, Mundo Marino) and "Technical Report Status Review of the Orca Named Kshamenk Mundo Marino Aquarium San Clemente Del Tuyo Province of BS. AS. - Argentina" dated December 1, 2001– The letter and report authored by Dr. Bastida states that the review of situation involving Kshamenk was initiated due to the death of his companion, a female orca, Balen, as a result Kshamenk became a solitary animal. These animals had been part of a captive breeding program (Mundo Marino and the Mundo Marino Foundation), which was suspended upon the death of the female. The purpose of the report is stated to be an investigation of various alternatives for future maintenance of Kshamenk.

- Maintenance at Mundo Marino– This alternative was presented as the most convenient for the aquarium. Although socialization with other cetaceans would be possible, it would not be the most adequate for the animal. If it were to remain at Mundo Marino, this animal would be without a partner for life and would be unable to reproduce. It is noted that the present trend of aquaria is to maintain orcas in groups.
- Purchase/Collection of a female Orca– National and local regulations now prohibit the capture of cetaceans from the wild eliminating the option of capture of animal. There are no other orcas maintained in Argentina to negotiate a loan. Importation from abroad is not feasible as no animals are available for import as all other orcas are currently in breeding programs, and the Mundo Marino facility is considered of lower standard than all other marine mammal parks globally. As a receiving facility, Mundo Marino is without the financial resources to invest in a project of this magnitude. Given the current political and economic situation in Argentina, funding for projects currently in progress will be difficult to finish.
- Release to the Wild– Dr. Bastida questions the motivation behind NGOs interested in liberating captive cetaceans. Regardless of the motivation, he continues that all releases are devoid of scientific content, fueled by sentiment and previous attempts have failed. He mentions "Keiko" as a case in point, the most expensive wild fauna "rescue" in history, involving a single individual animal. Based on current knowledge, an attempt to release Kshamenk would require a considerable financial investment, it is highly unlikely he would survive and the aquarium would lose the possibility of exhibiting this animal to the public.

The MMPA "*renders the U.S. as the country with the most restriction, controls and scientific endorsements in legal matters for marine mammal handling. This regulation has been so stringent that in may aspects it has hindered scientific development of the knowledge of this fauna group, and for this reason it [the fauna group] must suffer due to*

the various amendments made to date. Having said that, it is valid to assume that at the legal level said regulation is, presently, the most respectable, extensive and strict with regard to the goal of caring for the interests of marine mammals."

NMFS considers that "*presently there are no scientific protocols to reintroduce captive marine mammals into the wild*" and "*Congress has responded stating that any release of captive dolphins should be carried out in accordance with scientifically accepted protocols.*" Reintroduction of animals into the wild carries numerous risks to the wild populations including disease transmission and undesirable genetic exchanges. Regarding the individual released, it is important to assure they have the ability to forage, defend themselves from predators, to be assimilated into a social group and are no longer habituated to humans.

Dr. Bastida goes on to describe the complex issues inherent in cetacean rehabilitation due to the necessary participation of humans, which may result in bonding of the animal to the human. The longer the necessary treatment and the social interaction necessary for the animal decreases its likelihood to be successfully released. Numerous examples are given in which Dr. Bastida concludes that release was not successful.

- Integration into a Breeding Program at another Aquarium– Dr. Bastida acknowledges the history of captive breeding programs and the development of artificial insemination. Although artificial insemination shows promise for the future, current procedures are still in their early stages, and have not been published. For this reason, the possibility of exchange between aquaria based upon the transport of sperm should be discarded. Therefore, maintaining Kshamenk as a solitary animal, until such procedures are perfected, is not in the best interest of the breeding population.
- Conclusions– The overall conclusion was that the best alternative for Kshamenk would be transfer from Mundo Marino, as a loan, to another aquarium to be incorporated into a captive breeding program. Integration into a new social group will further increase his quality of life. Mundo Marino will lose the opportunity to show a species of public interest, but will have the opportunity to receive future offspring that may result from the breeding program. Kshamenk's genetic contribution to the global captive breeding program will be invaluable and increase genetic diversity of the population. The report further states the following considerations of which he feels Six Flags Worlds of Adventure can satisfy:
    - Overall health of the animal to be transferred complying with both Argentinean and U.S. regulations;
    - Legal structure of the loan agreement to be signed by both parties;
    - Overall condition of the receiving facility including life support systems;
    - Background of the participating professionals in the breeding program and the general handling of animals;

- Details related to transport including technical features of container, involved staff, and logistics;
- Inter-company communication system related to Kshamenk's integration and participation in the breeding program; and
- Education and conservation program of the receiving facility.

15) Herman Letter – Letter from Dr. Louis Herman, Director, Kewalo Basin Marine Mammal Laboratory, to Dr. Bastida dated April 23, 1993, in which Dr. Herman concludes that reintroduction would be very difficult for this animal. Reintroduction would require an investment of time and financial resources and post-release monitoring. It would be unlikely that this animal could survive without being successfully integrated into a pod. It has been suggested that this animal may have come from a transient pod, thus his pod members would be difficult to locate. It is Dr. Herman's opinion that "*the best decision of the orca in question is to continue to maintain it at your facility* [Mundo Marino]" making every effort to provide for its needs.

16) Todd Letter– Letter from Frank S. Todd, Executive Director, EcoCepts International, to Dr. Bastida dated March 22, 1993, in which Mr. Todd concludes that an attempt to release would be a "*grave error.*" As especially social animals, successful release would require the release in the company of its original pod. Mr. Todd claims that there is no real evidence that any stranded cetacean has been successfully released in the long run. Orcas are not endangered and Mundo Marino maintained a rehabilitated female orca. The research and educational value as a pair of potentially breeding killer whales outweighs the benefit of release. He further states that "*field biologists have little hands on experience, but this is not the case with oceanarium professionals because they are the ones that have to do all the work, and are most aware how complicated a procedure this is.*"

17) Manton Letter– Letter from Mr. Victor Manton, Secretary/Treasurer, European Association for Aquatic Mammals, to Dr. Bastida dated April 19, 1993, in which Mr. Manton concludes that "*release of captive Cetacea to the wild poses enormous problems and is seldom successful in the long term.*"

He further states that "*the welfare of captive animals is best addressed in the facilities to which they have become accustomed.*" Even if this animal's original pod could be identified, there is no proof that the animal would be able to support himself. Evidence of previous attempts shows that in most cases failure results with the death of the animal unless returned to captivity.

18) von Fersen Letter– Letter from Dr. Lorenzo von Fersen, Scientific Coordinator, Tiergarten Nurnberg, to Dr. Bastida dated March 28, 1993, in which Dr. von Fersen agreed with the determination to take the animal into captivity and advises that release is not in this animal's best interest for the following reasons:

- There are no records of previous experiences that demonstrate that the release of a cetacean has been successful;
- This species is not listed by the IUCN or NMFS;
- This animal likely belonged to a transient pod; and
- The animal was not healthy enough for release at the time of capture.

19) Dehnhardt Letter– Letter from Dr. Guido Dehnhardt, Department of Ethology, University of Bielefeld, to Dr. Bastida dated March 24, 1993, in which Dr. Dehnhardt does not recommend release because release of a single animal doesn't contribute to the survival of a species and should only be attempted for highly endangered species. Release would involve a substantial commitment of time and resources to a project that has little chance for success. Dr. Dehnhardt advises maintaining the animal at Mundo Marino for educational, research, and breeding purposes.

20) Tobayama Letter– Letter from Dr. Teruo Tobayama, Director, Kamogawa Sea World, to Dr. Bastida dated March 18, 1993, in which Dr. Tobayama recommends promotion of the captive breeding program at Mundo Marino by maintaining the killer whale in captivity. He further states that releases are not supported by the British and Canadian governments. He references a report published by the Advisory Committee on Marine Mammals for the Minister of Fisheries and Oceans, Government of Canada in which they conclude that, "*given the current state of knowledge, the release to the wild of cetaceans that have been in captivity for extended periods is not appropriate.*"

21) Allen Letter– Letter from Sonny Allen, Director of Marine Mammals, Marine World Africa/USA, to Dr. Bastida dated March 16, 1993, in which Mr. Allen concludes that reintroduction of this animal to the wild is premature. The letter states: "*I feel it is very premature of your Governmental Agency to ask you to release this animal back into the wild. Also stated in your letter, you have the support from your Governmental Authorities, so this is the agency you should address your situation to and look for direction and support from them. Give them all the information you can in regards to why this animal shouldn't be released now or even in the future.*"

To his knowledge, no killer whales have been successfully released back into the wild after stranding, as they become dependant on humans for medical treatment. As the pod of whales this animal came from is no longer in the area, chances of survival post-release are very slim. It is his professional opinion, that this animal shouldn't be released back into the wild and it is not likely to survive if released.

Mr. Allen further states: "*get as many veterinarians to write to your Government agencies in support of not releasing this animal back to the wild. Many times these types of action has a positive impact. I would also get in touch with your local newspapers and also the children to write letters. Politicians don't like to get pressure from either party.*"

22) Testimony of attending veterinarian, Dr. Julio Daniel Loureiro– Dr. Julio Daniel Loureiro confirms that he is licensed to practice veterinary medicine in Argentina and has been practicing continuously for 27 years. He has worked for Mundo Marino for the past 23 years and has spent that time caring for marine mammals. During this time, he has participated in the several strandings as an agent of Mundo Marino in which some animals have been released, others have died, and some have been rehabilitated, such as Kshamenk. Consideration was given for the release of Kshamenk during his rehabilitation. Based on Dr. Loureiro's experience, several concerns were noted including the possibility of disease transmission to the wild stock; his current health at the time and habituation to humans, which occurred during rehabilitation. This animal was not known as a member of the resident killer whale population, therefore integration into his original pod would be difficult. (Testimony taken February 11, 2002.)

Additional Information Submitted by Applicant

Documents Provided:

1) Curriculum Vitae– During an April 10, 2002, meeting between NMFS and the applicant, they provided the CVs of Dr. Julio Daniel Loureiro, Mundo Marino attending veterinarian, and Dr. Ricardo Bastida, National Council for Scientific and Technical Research (CONICET). Dr. Loureiro states that he is affiliated with Mundo Marino, the Marine Mammal Rescue and Rehabilitation Center and Mundo Marino Foundation. Dr. Bastida's affiliation is with CONICET and as a member of the faculty at the National University of Mar del Plata. His association with Mundo Marino is unclear from the document.

2) Letter from Mundo Marino– NMFS received a letter from Jose David Mendez, Mundo Marino, in support of the application on April 12, 2002. Mr. Mendez disputes the following claims that Kshamenk was the victim of a forced stranding and he is a Patagonian killer whale, therefore not from a resident pod. He reiterates Mundo Marino's long history of marine mammal care, the professional staff, the frequent occurrence of strandings along the Buenos Aires Province, the lawful possession of Kshamenk, the determent of maintaining Kshamenk as a solitary animal and the benefits of the breeding program.

3) Testimony of Mr. Miguel Cesar Marchi (provided by Mundo Marino on April 12, 2002)– Mr. Marchi states that he did not previously testify, as he did not find Kshamenk, but rather, another killer whale that stranded on November 17, 1992. He continues that he had been fishing in the area of Ria Las Salinas when he saw an animal during low tide that he confirmed to be a killer whale. Around 9:00 am, he notified Mundo Marino of the animal.

The following morning, November 18, 1992, his son, who was aboard the other fishing boat, informed him that they had found stranded killer whales near "Ria Ajo". He further

states that he was in perfect health and had been released from the hospital a month earlier. In November of 1992, he was aboard the fishing boat. On November 17, 1992, he was aboard "Mundo Marino I" as a sailor. Although he was captain of the boat at the time, he was not serving in that capacity, as he frequently had to travel during those months and unavailable to captain the boat. In addition, San Clemente del Tuyu is a very small port with no more than 8 - 10 ships and a small number of fishermen. (Testimony taken April 11, 2002.)

4) Argentine Naval Coast Guard Certificate (provided by Mundo Marino on April 12, 2002)– These documents are in Spanish and have not been adequately translated. We acknowledge that these documents have been summarized as evidence that Mr. M. Marchi was aboard "Mundo Marino I" on the date mentioned in his testimony.

5) Cardiologic Hospital Institute Statement (provided by Mundo Marino on April 12, 2002)– This statement dated October 9, 1991, indicates that Mr. M. Marchi can "*perform his habitual tasks, making light or moderate efforts.*"

6) Legal Opinion issued by Fernanda Lopez Abramovich and Gabriel Mararasso of Marval, O'Farrel and Mairal, Attorneys at Law (submitted to NMFS on April 11, 2002)- Legal opinion addressed to Bill Hughes and Jim Gesualdi, Six Flags Worlds of Adventure, addressing local applicable proceeding for obtaining exportation and transport permits required under Argentinean laws and regulations. This opinion is based on facts provided by Mundo Marino regarding this case. Their analysis concludes that: "*the exportation of the killer whale is provided in the Argentine law and regulations, and consequently, is legally possible subject to the fulfillment of the requirements for the issuance of relevant licenses and permits in administrative proceedings. However the National and Provincial relevant authorities have discretional faculties with respect to the issuance of licenses and permits.*"

7) Legal Opinion issued in Buenos Aires, Argentina (submitted to NMFS on May 8, 2002)– Legal opinion addressed to Mr. Octavio Perez Pardo, Director of Natural Resources Development, Argentine Ministry of Social Development has been provided to further address concerns regarding the legal proceedings in Argentina. This document apparently discusses a petition in the administrative proceedings in Argentina regarding authorizations necessary under Argentinean law.

"*In conclusion, if the Director of Etiologic and Aquatic Resources has determined that the interested oceanarium has complied with all the scientific and technical protection as prescribed by the Oceanarium law, for the approval of a reproduction program, including the transport and temporary export of the breeding animal, there are no legal impediments to prevent it. The measure shall be implemented by executive mandate, thereby, over the fundamental considerations set forth in this judgement, also the cause of action petitioned by Wild Earth Foundation be denied, to which, in order to comply with its right and duly process objective law, should be notified of this decision.*"

Attachment 3 - COMMENTS RECEIVED DURING THE PUBLIC COMMENT AND REVIEW PERIODS REGARDING THE ORIGINAL COLLECTION OF THE KILLER WHALE NAMED KSHAMENK

One of the most significant issues raised during the comment and review period concerned the circumstances surrounding the original collection of the adult male killer whale, Kshamenk, in Argentine waters. Great care was taken during the NMFS review of this information, as submitted by both the applicant (and Mundo Marino) and the commenters. The following addendum to the NMFS decision memo outlines the information submitted by commenters during the public comment period.

Comments from the following groups have been combined in order to provide a comprehensive account of the many issues surrounding the original collection of the killer whale, Kshamenk. Where applicable, individuals deemed to have expertise but not speaking on behalf of an organization are noted next to the specific issue for which they are commenting.

Whale and Dolphin Conservation Society, World Earth Foundation, Humane Society of the United States, Cetacean Society International, Earth Island Institute, and Argentinean Museum of Natural Sciences.

1) Some commenters submitted information, on behalf of personnel within the Mundo Marino organization, stating that the collection of Kshamenk was actually a forced stranding. According to commenters, the account received by these organizations from Mundo Marino personnel states that, "*the fishermen reported the owner about the presence of one pod inside Samborombón Bay. The pod was forced stranded with two Mundo Marino fishing boats, and were kept partially submerged in the water while their caudal peduncles were tied with a rope to a wooden post buried in the muddy bottom. The first animal brought out of the mud during Monday afternoon, but when brought into the pool, because of stress, it died. The same happened with the second specimen on Tuesday. Kshamenk survived on Wednesday because it was younger and brought into captivity in a more efficient way.*"

   NMFS response: Although NMFS would consider this capture method as described to be inhumane, and therefore deny the permit application for import based on the circumstances around the original collection, there was no substantial evidence to support this account. Further documentation (e.g., affidavits from Mundo Marino personnel providing the information) would have proven more substantial. In the absence of substantiated proof, NMFS could not make the determination that this account was accurate.

2) Commenters claimed that considerable doubt surrounds the rescue and rehabilitation of Kshamenk. Materials in the application stated that Kshamenk was originally found with three other whales and that when the fishermen came back with Mundo Marino staff, the three other whales were gone. It was presumed by the Mundo Marino staff that the three

whales had been able to move back out of the area with the high tide. However, commenters felt this was suspicious in that if the tide were sufficiently high to refloat the adults, it should have been able to refloat the smallest animal, Kshamenk. In addition, it took 2 days to finally transport Kshamenk to the aquarium, and in that time, there were no efforts to refloat him despite the fact that high tides would have occurred. Also, no efforts were noted in the Mundo Marino information that staff made an attempt to search in the nearby area for the three whales that had refloated. Both refloating and searching for the remainder of the pod would be common practices in many stranding organizations.

A prominent United States marine mammal veterinarian and stranding expert submitted his opinion that "*the case for initial rescue of this whale is unproven, the medical and behavioral history appears to be undocumented, and the criteria for disposition are undefined. Based on the available information, I believe that the circumstances surrounding the whale's rescue, transport to Mundo Marino, and the custody therein are not consistent with the principles supported, encouraged, or practiced under the Marine Mammal Protection Act. If this application were submitted under MMPA standards for determining the disposition of a stranded animal in the United States, it would likely be rejected because of insufficient information.*"

One commenter noted that "*an earlier 1992 report differs in key details from the 2002 report and suggests that refloating was never considered. The apparent planned response must have been to take the animal to Mundo Marino.*" Commenters felt this was in support of the scenario where Mundo Marino staff forced stranded Kshamenk with the intent to capture him for public display.

NMFS response: This stranding did not occur in the United States. MMPA standards and practices in the United States for responding to strandings do not apply in this case. Based on the entire record, there is no substantial evidence upon which NMFS could determine that the whale was taken in an inhumane manner.

3) No photo or film documentation of the event was taken by Mundo Marino staff as would again be customary in many stranding organizations.

NMFS response: Photo and film documentation of stranding events may be consistent with United States practice in situations such as this. However, this stranding did not occur in the United States and the absence of photo or film documentation does not necessarily support a determination that the whale was taken in an inhumane manner.

4) The veterinary report contained in the application materials noted that upon examination in the Bay, Kshamenk was dehydrated and sunburned but otherwise appeared in good health with normal respiratory rates. Additional examination of Kshamenk at the aquarium after his collection supports this diagnosis and also includes the finding of

Anisakis sp., a common parasite of marine mammals. As Kshamenk's health status was good, the decision to bring Kshamenk back to the aquarium for rehabilitation was also called into question. Instead, commenters felt that refloating should have been attempted as would be customary in many stranding organizations. Additionally, input was received from marine mammal biologists and rehabilitators from within the Argentina and the U.S. who commented that a sunburn and dehydration are not health reasons to take an orca into captivity, and the animal's respiration rates were within normal values. Also, keeping Kshamenk in natural salt water would have allowed for faster healing of sunburned areas.

Upon reviewing subsequent medical reports, this expert continues stating that, "*The presence of parasites alone would not be considered enough reason to retain a whale that had stranded four months previously." In addition, "Marino Mundo provides insufficient medical data (e.g., laboratory tests, blood chemistry, therapeutics, and original correspondence with consulting veterinarians) to validate their decision to retain the whale for health reasons.*"

In regards to this same issue, commenters also noted that the aquarium's veterinarian, Dr. Ricardo Bastida, stated that, "*In the case of stranded animals without serious health problems, it is possible to make quick rehabilitations in situ ad [sic] then release them. Our group has participated in this kind of experiences including La Plata dolphins caught in nets on the surface, strandings of Minke whales, false killer whales and orca whales that didn't show major problems and after a rehdyration and preventative treatment with antibiotics, could be released during the high tide.*"

NMFS response: This stranding did not occur in the United States. MMPA standards and practices in the United States for responding to strandings do not apply in this case. Based on the entire record, there is no substantial evidence upon which NMFS could determine that the whale was taken in an inhumane manner.

5) Commenters also noted discrepancies in the applicant's information, as provided by Mundo Marino. One United States marine mammal veterinarian and stranding expert found that the information "*comprises notarized accounts (dated 2002, almost 10 years after the event) by Mundo Marino and by the three fishermen who reported the strandings. The official letter to the governing authority, dated 11/24/92, contains no detail on this whale or the rescue operation. (Note: The 11/24/92 letter and the 2002 Mundo Marino report refer to Miguel Marchi as an eyewitness; the sworn statement [2002] is from Fabian Cesar Marchi.) There is meager original, substantive documentation of this event.*" Further, "*it includes no basic biological data on the whale or any details of the rescue and subsequent medical care and husbandry.*" Again, the commenters felt this supported the allegations of a forced stranding.

NMFS response: During the review period, NMFS contacted the appropriate Argentine government agency for more information and documentation on the original collection and current legal status of Kshamenk. In coordination with the U.S. Embassy, the Argentine government responded that no laws existed regarding collection in 1992, and it did not investigate the circumstances at that time. The information was gathered when questions arose later at the time of the death of Kshamenk's companion in captivity. The issues raised by the commenters do not amount to substantial evidence that Kshamenk was taken in a forced stranding.

6) The decision for Kshamenk to remain at the aquarium and not be returned to the wild was also called into question. Commenters felt that Kshamenk's health status was good but Mundo Marino never seriously discussed Kshamenk's return to the wild. In addition, Kshamenk was being acclimated to aquarium staff and performing shows– an action that would not be considered appropriate for any animal that was still being considered for rehabilitation and release back to the wild. Also, any support provided by the applicant and Mundo Marino for Kshamenk's retention in captivity were received from staff in other zoological settings. The applicant and Mundo Marino did not provide any input from scientists external to a zoological setting.

NMFS response: Again, MMPA standards and practices in the United States for rehabilatation and release of stranded marine mammals do not apply in these circumstances. In addition, issues raised by the commenters are not supported by substantial evidence that Kshamenk was taken in a forced stranding.

7) Media reports in the Argentinean press (not submitted to NMFS) and also by an application to capture orcas issued in 1996 by another Argentinean public display facility, Mar del Plata aquarium, which stated (in translation) their intention to use the same capture method used by Mundo Marino to capture orcas: "by forced stranding." (Document submitted to NMFS.)

NMFS response: No Argentinean press releases were submitted to NMFS. The actual permit application document mentioned was provided to NMFS by WDCS, but the copy was in Spanish and the fax transmittal was very poor and difficult to read. An e-mail with a written translation by a member of Wild Earth Foundation (WEF) of the document was provided to NMFS by WDCS (attachment #3 in 4/5/02 letter). This translation does describe capture methods using boats to isolate an animal from its pod and herd it to shallow water near shore in the area of Punta Rasa in Samborombón Bay (noted by WEF that this is where Mundo Marino "rescued most of their animals"), but this method is not referred to as "the same capture method used by Mundo Marino to capture orcas by forced stranding." NMFS cannot substantiate these claims based on the documents provided.

8) Many commenters noted the apparent discrepancy in Kshamenk's age. One United States veterinarian and stranding expert noted that, "*the permit application states that the whale is approximately 10 years old and thus about a year old at the time of the stranding in 1992 (as asserted by Mundo Marino). Other groups state that he was at least 5 years old in 1992. The fact that he sired a calf in 1997 supports the latter (i.e., the minimum age of sexual maturity for killer whale males is believed to be about 10 years).*"

One United States veterinarian and stranding expert noted that, "*It is my opinion that Mundo Marino has not provided the information expected and needed to evaluate the merits of the application. What does exist is vague. In fact, the age of the whale at stranding, as asserted by Mundo Marino, is sufficiently at odds with its having sired five years later, as to call into questions the whale's identity.*"

NMFS response: NMFS is concerned about the discrepancy of Kshamenk's age and believes that in order to have sired a calf in 1997, Kshamenk must have been older than one year of age at the time of collection.

9) WDCS claimed that Decree-Law 1216, 19 April 1974, prohibits the capture of marine animals, including cetaceans. This law has been successfully used to prevent Commerson's dolphin captures by a Japanese oceanarium. WDCS believes that this legal interpretation justifies the application of this law to all marine mammals.

NMFS response: The Argentine government provided a statement to NMFS that no laws existed when Kshamenk was collected in 1992 and has been maintained legally by Mundo Marino.

10) WDCS was notified of pending legal actions within Argentina surrounding the export of Kshamenk. NMFS has a copy of this legal action, which requests a hold on issuance of the export permit until the legality of Kshamenk's capture is resolved (loose transcription).

NMFS response: The Argentine government provided a statement to NMFS that no laws existed regarding collection in 1992, when the male was collected, and he has been maintained legally by Mundo Marino. In addition, the Argentinean government has provided a statement that necessary administrative proceedings are being conducted and they have no information regarding any legal action initiated against those proceedings. NMFS has inquired whether the Argentinean government needs any further information from NMFS, and forwarded copies of the application, including additional information, for their consideration.

11) Allegations were made that Mundo Marino was offering money to fishing vessels operating in the area "who could help in the capture or drive fishery of Orcas." Claims were also made that Mundo Marino had previously used forced strandings to collect orcas

and other cetaceans for public display in the aquarium (e.g., Mundo Marino has displayed three orcas, two of which are now dead, all collected through 'stranding' events).

NMFS response: NMFS cannot substantiate these claims based on the documents provided.

12) The fishermen present at the stranding event (Puertas, Marchi Uran and Blehn) failed to mention in their affidavits that they were paid by and operating vessels owned by Mundo Marino and instead tried to appear as independent fishermen who just happened to be in the area.

NMFS response: Argentinean Coast Guard reports show that the above fishermen and the vessels involved are employed by Mundo Marino. Although NMFS acknowledges the apparent coincidental nature of the situation, NMFS cannot substantiate claims of the fishermen's involvement in a forced stranding based on this information.

13) The present status of Argentine killer whales is unknown, except for the Northern Patagonia population. Commenters raised concerns over how further 'forced strandings' would unknowingly impact killer whales. Commenters felt that approval of Kshamenk's import into the United States would set a dangerous precedent and encourage more forced strandings to take place in Argentina and other parts of the world.

NMFS response: NMFS would agree that marine mammals cannot be imported into the United States if they are collected in an illegal and/or inhumane manner (e.g., forced stranding). This allegation has not been demonstrated by substantial evidence based on the entire record of this application. NMFS is also concerned about setting a dangerous precedent and/or taking any action that would encourage forced stranding captures. However, substantial evidence has not been demonstrated that this whale was collected in a forced stranding.

14) Commenters, including a United States marine mammal veterinarian and stranding expert, noted that documents submitted in the application contained independent expert opinion from a Dr. Ricardo Bastida. The application did not note Dr. Bastida's previous affiliation with Marino Mundo and commenters provided documentation that Dr. Bastida did in fact serve as the head of the Mundo Marino Foundation. Commenters raised the issue of the weight of his input on Kshamenk's present situation and the probability of a conflict of interest existing in his comments. Commenters also noted inconsistencies in Dr. Bastida's technical report.

NMFS response: NMFS did consider Dr. Bastida's affiliation with Mundo Marino and, although considered, did not accept his comments as an independent expert.

15) General lack of information in the application and subsequent applicant materials: One United States veterinarian and stranding expert noted that, "*It is my opinion that Mundo Marino has not provided the information expected and needed to evaluate the merits of the application. What does exist is vague. In fact, the age of the whale at stranding, as asserted by Mundo Marino, is sufficiently at odds with its having sired five years later, as to call into questions the whale's identity.*"

NMFS response: The applicant did supply sufficient information to meet the requirements of the MMPA and AWA. Therefore, NMFS had sufficient information to reach a permit decision. Again, the information submitted by the commenters opposed to the import did not contain substantial documentation to support the allegation of inhumane taking.

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

JUL 12 2002

G. William Hughes
Zoological Director
Funtime, Inc.
Six Flags Worlds of Adventure
1060 North Aurora Road
Aurora, Ohio 44202

Dear Mr. Hughes:

Enclosed is the updated Marine Mammal Data Sheet reflecting your verification that one killer whale (Shouka) was transported on May 20, 2002, from Marineland Cote D'Azur to Six Flags Worlds of Adventure. This data sheet should be retained and should accompany any future notifications to this Office concerning the disposition of this animal.

We understand that custody of the animal has not changed. As such, please note that Marineland Cote D'Azur is listed as the holder of this animal. Shouka was previously identified in the marine mammal inventory database under a foreign identification number. For consistency, Shouka's original identification number (FOR0000737) has remained unchanged.

If you have any questions about the enclosed data sheets or notifications required under the Marine Mammal Protection Act, please contact the Permits Division at 301-713-2289.

Sincerely,

Eugene T. Nitta

Eugene T. Nitta
Acting Chief, Permits, Conservation
and Education Division
Office of Protected Resources

Enclosure

cc w/MMDS: Mike Riddell, Marineland Cote D'Azur
Barbara Kohn, D.V.M., APHIS
Robert H. Mattlin, Ph.D., MMC
Mary Colligan, Northeast Region
Michael Sissenwine, Northeast Science Center

Printed on Recycled Paper

MARINE MAMMAL DATA SHEET

Date 07/10/2002
SHT# SHT0002203

OMB No. 0648-0084, exp 7/31/03
HN: PHF000077 SN: 039/001
For NMFS Use Only

I. Holder-Specific:

Holder: Marineland Cote D'Azur
Person or other Entity With Custody of the Marine Mammal

Facility: Marineland Cote D'Azur
Name of Facility (if different from Holder)

Date assumed custody: 02 – 25 – 93 Date arrived at Facility: 02 – 25 – 93

City/State/Zip (include Country for foreign facilities): 06600 Antibes, France, FR
Location of Facility

Animal Identification No. _____ (assigned by holder)

Animal Name: SHOUKA (assigned by holder)

Captive Purpose(s): ☒ Public display ☐ Scientific research ☐ Enhancement

II. Animal-Specific:

Species: KILLER WHALE; ORCA - ORCINUS ORCA
Common Name - Scientific Name

Sex: ☐ Male ☒ Female ☐ Unknown

Population Name: _____

NOAA Identification No. FOR0000737 (☐ check here if unknown or not yet assigned)

Date of birth: 02 – 25 – 93 ☒ Actual ☐ Estimated

Captive Origin (check only one): ☒ Captive born ☐ Wild capture ☐ Beach/stranded ☐ Unknown

Date of original captivity: 02 – 25 – 93 (**ATTACH** documentation if before December 21, 1972.)

III. Source: Indicate how and from whom custody of this animal was obtained, including change in facility.

☒ Captive birth

☐ Transfer/ Transport — Name of Previous Holder: _____
Name of Previous Facility: _____

☐ Import Permit No. _____ or ☐ For medical treatment otherwise unavailable (16 U.S.C. 1379(h)(2))

☐ Beach/Stranded (Please see notes)

☐ Wild Capture Permit No. _____ Collector: _____

Location: _____ / _____ _____
Latitude/Longitude Geographical Name

IV. Disposition: The date and reason this animal left your custody or changed facility.

☒ Transfer/ Transport Date: 05 – 20 – 02 Recipient: Marineland Cote D'Azur
Facility: Six Flags Worlds of Adventure

☐ Death Date: __ – __ – __ Cause: ☐ Premature/still birth ☐ Euthanasia ☐ Other

If "Euthanasia," indicate reason: ☐ life-threatening condition involving pain/suffering or ☐ other

If "Other Cause," describe briefly: _____

☐ Release Date: __ – __ – __ Permit No. _____ (reintroduction) or ☐ Unauthorized release/escape

Location: _____ / _____ _____
Geographic Location Tag number or description of other identifying markings

MARINE MAMMAL DATA SHEET

Date 07/10/2002
SHT# SHT0009601

OMB No. 0648-0084, exp 7/31/03
HN: PHF000077 SN: 039/001
For NMFS Use Only

I. Holder-Specific:

Holder: Marineland Cote D'Azur
Person or other Entity With Custody of the Marine Mammal

Facility: Six Flags Worlds of Adventure
Name of Facility (if different from Holder)

Date assumed custody: 02 – 25 – 93 Date arrived at Facility: 05 – 20 – 02

City/State/Zip (include Country for foreign facilities): Aurora, OH 44202 US
Location of Facility

Animal Identification No. SFWA-00-0201
(assigned by holder)

Animal Name: SHOUKA
(assigned by holder)

Captive Purpose(s): ☒ Public display ☐ Scientific research ☐ Enhancement

II. Animal-Specific:

Species: KILLER WHALE; ORCA - ORCINUS ORCA
Common Name - Scientific Name

Sex: ☐ Male ☒ Female ☐ Unknown

Population Name: _____

NOAA Identification No. FOR0000737 (☐ check here if unknown or not yet assigned)

Date of birth: 02 – 25 – 93 ☒ Actual ☐ Estimated

Captive Origin (check only one): ☒ Captive born ☐ Wild capture ☐ Beach/stranded ☐ Unknown

Date of original captivity: 02 – 25 – 93 (**ATTACH** documentation if before December 21, 1972.)

III. Source: Indicate how and from whom custody of this animal was obtained, including change in facility.

☐ Captive birth

☒ Transfer/ Transport
Name of Previous Holder: Marineland Cote D'Azur
Name of Previous Facility: Marineland Cote D'Azur

☐ Import Permit No. _____ or ☐ For medical treatment otherwise unavailable (16 U.S.C. 1379(h)(2))

☐ Beach/Stranded (Please see notes)

☐ Wild Capture Permit No. _____ Collector: _____

Location: _____/_____ _____
Latitude/Longitude Geographical Name

IV. Disposition: The date and reason this animal left your custody or changed facility.

☐ Transfer/ Transport Date: ___ – ___ – ___ Recipient: _____
Facility: _____

☐ Death Date: ___ – ___ – ___ Cause: ☐ Premature/still birth ☐ Euthanasia ☐ Other

If "Euthanasia," indicate reason: ☐ life-threatening condition involving pain/suffering or ☐ other

If "Other Cause," describe briefly: _____

☐ Release Date: ___ – ___ – ___ Permit No. _____ or ☐ Unauthorized release/escape
(reintroduction)

Location: _____/_____ _____
Geographic Location Tag number or description of other identifying markings



Zoology Dept.
1060 N. Aurora Rd.
Aurora, OH 44202
United States of America

330-995-2102 (Office)
330-995-2117 (Fax)

FAX TRANSMITTAL

To:	Jennifer Skidmore NOAA NMFS OPR	From:	Bill Hughes Zoological Director
Fax:	301-713-0376	Phone: Fax:	330-995-2149 330-995-2117

MAY 22 2002

Date: 5-22-02

of Pages: 2 (with cover)

Subj: Marine Mammal Data Sheet on recent Import

Message:

Please find attached the Marine Mammals Data Sheet for the recent import of a killer whale from France whom arrived on 5-20-02. If you need the original copy of this sheet, please let me know and I will mail it to your attention.

This transmission contains confidential information intended for use only by the above recipient. Reading, discussion, distribution or copying of this message in partial or in full is strictly prohibited by anyone other than the named recipient or his or her authorized agents.

If you have received this fax in error, please call the sender as listed on the fax cover regarding this error.

MARINE MAMMAL DATA SHEET

Date _____
SHT# _____

OMB No. 0648-0084, exp 7/31/03
HN: SN:
For NMFS Use Only

I. Holder-Specific:

Holder: Funtime, Inc. (Person or other Entity With Custody of the Marine Mammal)
Facility: Six Flags Worlds of Adventure (Name of Facility (if different from Holder))

Date assumed custody: 05 – 20 – 02 Date arrived at Facility. 05 – 20 – 02

City/State/Zip (include Country for foreign facilities): Aurora, Ohio, 44202 (Location of Facility)

Animal Identification No. SFWA-Oo-0201 (assigned by holder) Animal Name: Shouka (assigned by holder)

Captive Purpose(s). [X] Public display [ ] Scientific research [ ] Enhancement

II. Animal-Specific:

Species: Killer Whale Orcinus Orca (Common Name - Scientific Name) Sex: [ ] Male [X] Female [ ] Unknown

Population Name: Captive Born

NOAA Identification No. _____ ([X] check here if unknown or not yet assigned)

Date of birth: 02 – 25 – 93 [ ] Actual [ ] Estimated

Captive Origin (check only one): [X] Captive born [ ] Wild capture [ ] Beach/stranded [ ] Unknown

Date of original captivity: 02 – 25 – 93 (**ATTACH** documentation if before December 21, 1972.)

III. Source: Indicate how and from whom custody of this animal was obtained, including change in facility.

[X] Captive birth

[ ] Transfer/ Transport Name of Previous Holder. Marineland, S.A.
Name of Previous Facility. _____

[X] Import Permit No. 1004-1656-00 or [ ] For medical treatment otherwise unavailable (16 U.S.C. 1379(h)(2))

[ ] Beach/Stranded (Please see notes)

[ ] Wild Capture Permit No. _____ Collector: _____

MAY 22 2002

Location _____ / _____ (Latitude/Longitude) _____ (Geographical Name)

IV. Disposition: The date and reason this animal left your custody or changed facility.

[ ] Transfer/ Transport Date: __ – __ – __ Recipient: _____
Facility: _____

[ ] Death Date: __ – __ – __ Cause [ ] Premature/still birth [ ] Euthanasia [ ] Other

If "Euthanasia," indicate reason: [ ] life-threatening condition involving pain/suffering or [ ] other

If "Other Cause," describe briefly: _____

[ ] Release Date __ – __ – __ Permit No. _____ (if introduction) or [ ] Unauthorized release/escape

Location _____ (Geographical Location) (Latitude/Longitude or description of other identifying markings)

1060 North Aurora Road • Aurora, Ohio 44202
(330) 562-7131 • Fax (330) 562-7020
www.sixflags.com

April 15, 2003

APR 16 2003

VIA FEDERAL EXPRESS

Mr. Steve Leathery, Chief
Permits, Conservation and Education Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, Maryland 20910

Re: Funtime, Inc. d/b/a Six Flags Worlds of Adventure
Marine Mammal Import Permit No. 1004-1656-00

Dear Mr. Leathery:

In accordance with 50 C.F.R. § 216.39 and Special Condition B.4.a. of the above-captioned permit, I am writing on behalf of Funtime, Inc. d/b/a Six Flags Worlds of Adventure ("Six Flags") to request a twelve-month permit extension, until May 16, 2004, to import the killer whale "Kshamenk" from Mundo Marino, San Clemente del Tuyu Province of Buenos Aires, Argentina, for public display purposes. The grounds for this extension request are set forth below.

On May 16, 2002, the National Marine Fisheries Service ("NMFS") issued Six Flags a permit (No. 1004-1656-00) under the Marine Mammal Protection Act (the "MMPA") to import two killer whales for purposes of public display. Notice of such permit was duly published in the *Federal Register* on May 22, 2002 (67 *Fed. Reg.* 35965). Special Condition B.1.b. provides that the import authorization expires on May 16, 2003.

The first of the two animals, an adult female ("Shouka") from Marineland S.A. in Antibes, France, was successfully imported into the United States in May 2002 and is currently housed at our facility in Aurora, Ohio. The second animal, the adult male Kshamenk, still remains in Argentina, and it now appears that the necessary Argentine export permits may not be obtained prior to the expiration date of Six Flags' MMPA import permit.

Since last spring, Mundo Marino has devoted considerable effort to obtaining all necessary Argentine export permits. In February 2003, one of these permits, a "transport permit" from the Province of Buenos Aires, was issued. However, to date, Mundo Marino has not been able to obtain two additional permits required from Argentine Federal authorities, a permit under the so-called National Oceanary Regulation (the "Oceanary permit") and the associated permit under the Convention on International Trade in Endangered Species of Fauna and Flora (the "CITES permit"). On March 23, 2003, the Environment and Sustainable Development Secretariat of the Ministry of Social Development denied these permits.

Under the National Administrative Procedure Act of Argentina, the denial of the Oceanary and CITES permits may be challenged through an administrative appeal known as a "hierarchical appeal." On April 15, 2003, Mundo Marino duly filed a hierarchical appeal, asking the Minister of Social Development to overturn the Secretariat's adverse decisions. That appeal is currently pending. We understand that Mundo Marino and its counsel believe that there are good grounds for the appeal. Six Flags thus remains hopeful that the appeal will be successful and that, in due course, the necessary Argentine permits will be issued. However, it appears unlikely that the appeal will be decided prior to the May 16, 2003 expiration date of Six Flags' MMPA import permit.

In the circumstances just described, Six Flags submits that a twelve-month extension of the duration of its permit to import Kshamenk is fully warranted. NMFS should allow the Argentine appellate process time to run its course, without prejudicing Six Flags' ability eventually to import Kshamenk if the appeal is successful.

Because the requested extension does not extend the duration of the permit beyond twelve months, Six Flags believes that this should be treated as a "minor amendment" within the meaning of 50 C.F.R. §§ 216.39(a)(1)(iv) and 216.39(a)(2). In all other respects, the terms and conditions of Six Flags' permit remain the same.

Thank you for your consideration of this request. I look forward to receiving your decision. In the interim, if you have any questions, or need any additional information, please don't hesitate to contact me.

Very truly yours,

G. William Hughes,
Zoological Director

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

APR 22 2003

Mr. G. William Hughes
Zoological Director
Funtime, Inc.
Six Flags Worlds of Adventure
1060 North Aurora Road
Aurora, Ohio 44202

Dear Mr. Hughes:

We are in receipt of your request for an extension to Permit No. 1004-1656 to import into the United States one killer whale (*Orcinus orca*) from Mundo Marino, Buenos Aires, Argentina, to Six Flags Worlds of Adventure in Aurora, Ohio. In your letter, you indicated that the Environment and Sustainable Development Secretariat of Argentina denied Mundo Marino's request for permits under the National Oceanary Regulation and the Convention on International Trade in Endangered Species on March 23, 2003. In order to complete our files, please provide additional documentation regarding the denials issued by the Secretariat.

Please contact me at (301) 713-2289 should you have any questions regarding this request.

Sincerely,

Stephen L. Leathery

Stephen L. Leathery
Chief, Permits, Conservation
and Education Division
Office of Protected Resources

Printed on Recycled Paper

1060 North Aurora Road • Aurora, Ohio 44202
(330) 562-7131 • Fax (330) 562-7020
www.sixflags.com

April 25, 2003

VIA FEDERAL EXPRESS

Mr. Stephen L. Leathery, Chief
Permits, Conservation and Education Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, Maryland 20910

RECEIVED
APR 28 2003
By

Re: Funtime, Inc. d/b/a Six Flags Worlds of Adventure
Marine Mammal Import Permit No. 1004-1656-00

Dear Mr. Leathery:

In response to your letter of April 22 requesting additional documentation regarding the March 24 decision of the Environment and Sustainable Development Secretariat of the Ministry of Social Development in Argentina and the subsequent, April 15 hierarchical appeal from such decision, I am enclosing the following:

(1) A copy of Resolution 289/03, dated March 24, 2003, issued by the Secretary in charge of the Argentine National Environment and Sustainable Development Secretariat, in Administrative File No. 70-3350/2001, together with an unofficial English translation of this Resolution. The Resolution denies the Argentine Federal authorizations, specifically the Oceanary permit and the CITES permit, necessary to carry out the breeding loan program for Kshamenk.

(2) A copy of the Appeal to Higher Administrative Authority, filed by Mundo Marino on April 15, 2003, in Administrative File No. 70-3350/2001, together with an unofficial English translation of this Appeal. The Appeal identifies numerous defects in the Resolution, asks that it be declared null and void, and requests an order that all necessary authorizations be issued. It is our understanding that the Appeal will be considered and decided by the Ministry of Social

Development, which oversees the National Environment and Sustainable Development Secretariat.

As indicated in our April 15 extension request, we are hopeful that Mundo Marino's appeal will be successful. However, we cannot predict with certainty how long the appellate process will take. A Presidential election is being held in Argentina this weekend. Thereafter, a run-off election is possible. The new President will not be installed until later this spring, and it will likely take some time for a new Minister of Social Development to be appointed, take office and assume responsibility over the Ministry's affairs, including Mundo Marino's appeal. The appellate process may thus extend over a substantial period. In such circumstances, we believe the one-year permit extension requested is fully warranted.

If you have any further questions or need any additional information, please don't hesitate to contact me.

Very truly yours,

G. Williams Hughes

G. William Hughes,
Zoological Director

Enclosures

Ministerio de Desarrollo Social
Secretaría de Ambiente y Desarrollo Sustentable

Buenos Aires, 24 de marzo de 2003

Señor Presidente de
Mundo Marino
D. Ricardo Mendez
S / D

De mi consideración:

Me dirijo a usted a efectos de remitir adjunto a la presente copia certificada de la Resolución 289/02, para su conocimiento.

Saludo a usted atentamente.

Ing. Raúl CARLOS MERENSON
SECRETARIO DE AMBIENTE Y
DESARROLLO SUSTENTABLE

Ministerio de Desarrollo Social

Secretaría de Ambiente y Desarrollo Sustentable

BUENOS AIRES, 24 MAR. 2003

VISTO el expediente del registro de la SECRETARÍA DE AMBIENTE Y DESARROLLO SUSTENTABLE Nº 70-3350/2001, y

CONSIDERANDO:

Que, mediante el expediente precitado, tramita el otorgamiento de las autorizaciones necesarias para dar cumplimiento a un convenio reproductive de orcas, solicitado por MUNDO MARINO SOCIEDAD ANÓNIMA el día 26 de diciembre de 2001.

Que el convenio reproductivo al que se refieren las autorizaciones solicitadas por MUNDO MARINO SOCIEDAD ANÓNIMA, celebrado en NUEVA. YORK, ESTADOS UNIDOS DE AMÉRICA, el día 6 de septiembre de 2001, con SIX FLAGS THEME PARKS INC., tiene por objeto el préstamo, a tal entidad, del ejemplar macho joven de *Orcinus orca* cuya tenencia posee el oceanario nacional en cuestión, desde el 19 de noviembre de 1992, bajo el régimen del REGLAMENTO PARA ESTABLECIMIENTOS QUE ALBERGAN MAMÍFEROS MARINOS, Resolución de la ex SECRETARÍA DE RECURSOS NATURALES Y AMBIENTE HUMANO Nº 351 del 18 de septiembre de 1995. El préstamo así convenido persigue una finalidad declarada de integración del animal del caso a un programa de reproducción, por ser llevado a cabo en las instalaciones del oceanario extranjero ubicadas en los ESTADOS UNIDOS DE AMÉRICA, durante el tiempo necesario para la gestación de tres crías supervivientes, la última de las cuales, junto con el progenitor macho, sería devuelta a MUNDO MARINO SOCIEDAD ANÓNIMA, al concluirse el programa descripto sumariamente. Es decir que, luego de transcurridos los años que la reproducción de la especie animal bajo examen requiere, el ejemplar originariamente remitido al extranjero regresaría al país, junto con la última de sus crías vivas.

Que, en razón de los antecedentes descriptos, debe concluirse que las autorizaciones solicitadas por MUNDO MARINO SOCIEDAD ANÓNIMA son, en el marco inmediato del REGLAMENTO PARA ESTABLECIMIENTOS QUE

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ALBERGAN MAMÍFEROS MARINOS, y en el contexto normativo que emana de la Ley de Protección y Conservación de la Fauna Silvestre Nº 22.421 y su reglamentación y de la CONVENCIÓN SOBRE COMERCIO INTERNACIONAL DE ESPECIES AMENAZADAS DE LA FAUNA Y FLORA SILVESTRES (CITES) aprobada por la Ley Nº 22.344-, las siguientes: a) la aprobación del programa reproductivo sobre la base del cual solicita el permiso para remitir a ESTADOS UNIDOS DE AMÉRICA el animal en cuestión; b) la autorización de la exportación por parte de la autoridad nacional de aplicación de la Ley Nº 22.421; y c) el permiso pertinente expedido, con motivo de la exportación, por la autoridad administrativa de la CONVENCIÓN SOBRE COMERCIO INTERNACIONAL DE ESPECIES AMENAZADAS DE LA FAUNA Y FLORA SILVESTRES (CITES).

Que, en el procedimiento analizado, han sido admitidas como partes interesadas la FUNDACIÓN FAUNA ARGENTINA y la FUNDACIÓN TIERRA SALVAJE, las cuales, ejerciendo la defensa del ambiente y los recursos naturales en su carácter de asociaciones que propenden a la protección de ese derecho de incidencia colectiva, en los términos del artículo 43 de la Constitución Nacional, han solicitado, mediante diversidad de escritos fundados, que la SECRETARÍA DE AMBIENTE Y DESARROLLO SUSTENTABLE se abstenga de otorgar a MUNDO MARINO SOCIEDAD ANÓNIMA las autorizaciones que hicieran posible la exportación del ejemplar de *Orcinus orca* de que se trata.

Que, asimismo, tras trascender a la comunidad la existencia de un trámite residenciado en la autoridad ambiental nacional orientado a obtener la autorización para la exportación de la orca, las áreas pertinentes de la SECRETARÍA DE AMBIENTE Y DESARROLLO SUSTENTABLE han recibido múltiples mensajes, notas y correos electrónicos, oponiéndose, en su gran mayoría, a la exportación del animal.

Que la ex DIRECCIÓN DE RECURSOS ICTÍCOLAS Y ACUÍCOLAS, en su carácter de inmediata autoridad de aplicación del REGLAMENTO PARA ESTABLECIMIENTOS QUE ALBERGAN MAMÍFEROS MARINOS, en subsidio de los dos dictámenes técnicos que MUNDO MARINO SOCIEDAD ANÓNIMA acompañó a su solicitud, requirió la opinión del CENTRO AUSTRAL DE

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INVESTIGACIONES CIENTÍFICAS, del CENTRO NACIONAL PATAGÓNICO – ambos dependientes del CONSEJO NACIONAL DE INVESTIGACIONES CIENTÍFICAS Y TÉCNICAS (CONICET)- y del MUSEO ARGENTINO DE CIENCIAS NATURALES "BERNARDINO RIVADAVIA" E INSTITUTO NACIONAL DE INVESTIGACIONES DE LAS CIENCIAS NATURALES. Además, obran también en el expediente una nota de la DIRECCIÓN PROVINCIAL DE FISCALIZACIÓN DE LA ACTIVIDAD PESQUERA del MINISTERIO DE LA PRODUCCIÓN de la PROVINCIA DE BUENOS AIRES y otra del ANIMAL PLANT HEALTH INSPECTION SERVICE (APHIS).

Que el primero de los dictámenes técnicos presentados por la parte interesada en la exportación, suscripto con fecha de diciembre de 2001 por Ricardo BASTIDA, Director del Grupo de Trabajo Mamíferos Marinos del Departamento de Ciencias Marinas de la UNIVERSIDAD NACIONAL DE MAR DEL PLATA, e investigador principal del CONSEJO NACIONAL DE INVESTIGACIONES CIENTÍFICAS Y TÉCNICAS, expresa que *habiendo analizado todas las alternativas posibles a adoptar con la orca Kshamenk, se llega a la conclusión que la mejor de ellas -tanto para el animal como para las instituciones involucradas- es cederla en préstamo reproductivo a una institución de prestigio empresarial y científico como la que ha propuesto Mundo Marino S.A.*

Que el segundo dictamen técnico presentado por MUNDO MARINO SOCIEDAD ANÓNIMA, suscripto el 11 de noviembre de 2001 por el Dr. Lorenzo VON FERSEN, coordinador científico, expone que *en el caso de Kshamenk es importante recalcar que este individuo posee un valor especial dado que ha demostrado ser un macho fértil y con buenas aptitudes sociales que hacen de él un buen macho reproductor. A esto hay que sumar su edad, que con diez años significa el comienzo de su fase reproductiva. La experiencia ha demostrado que en muchas especies de cetáceos no todos los individuos son potencialmente reproductores. La estrategia de la mayoría de las instituciones que poseen individuos con buen potencial reproductor, como es el caso de Kshamenk, hacen todo lo posible para que estos individuos puedan seguir participando de programas de reproducción. Ambos aspectos mencionados: la*

posibilidad de socialización con individuos de su misma especie y la posibilidad de que Kshamenk pueda procrearse, son argumentos suficientes para avalar en forma clara la cesión del animal Kshamenk al oceanario Six Flags USA. Es importante recalcar que las otras dos instituciones participantes en este programa coordinado de reproducción: SIX FLAGS, Ohio y MARINELAND, Francia, tienen una experiencia notable en el manejo y reproducción de orcas en cautiverio.

Que el informe del CENTRO AUSTRAL DE INVESTIGACIONES CIENTÍFICAS, suscripto el 26 de marzo de 2002 por Eduardo OLIVERO, director de la institución, indica que *el CADIC no cuenta con especialistas en temas relacionados al cautiverio de mamíferos marinos, lo que nos impide opinar sobre el particular.*

Que el informe del CENTRO NACIONAL PATAGÓNICO, suscripto el 27 de marzo de 2002 por los Dres. Enrique CRESPO, Mirtha LEWIS y Claudio CAMPAGNA, señala lo siguiente: a) El proyecto contribuirá al conocimiento de la biología de la especie en condiciones de cautiverio. La obtención de crías descendientes de la orca argentina con otra cualquiera de una población del hemisferio norte, permitiría la obtención de genotipos bizarros en cautividad que de otra forma no se podrían dar naturalmente; b) No queda claro que el aporte genético de una orca perteneciente a poblaciones del Hemisferio sur pueda beneficiar a la poblacion de orcas en cautiverio. Seguramente aumentará la variabilidad genética, pero lo hará sin el efecto co-evolutivo del que gozan los genomas de poblaciones naturales; c) Existe la posibilidad de muerte del animal trasladado (lo cual queda en claro incluso en los puntos del contrato con la empresa que llevaría a cabo la reproducción); d) De la serie de argumentos presentados por la empresa sobre alternativas para el destino de la orca, surge que el aporte concreto al conocimiento científico es la implementación de técnicas de reproducción asistida (inseminación o implantes embrionarios). Esta posibilidad debería ser explorada ya que es sumamente exitosa en otras especies animales tanto domésticas como salvajes y podría considerarse como paso previo a la decisión de fertilización natural. Con esta opción, además, se evitaría el traslado del ejemplar y sólo sería necesario el traslado de un grupo de especialistas; e) En lo que respecta al desarrollo de conocimiento a través de la fertilización natural, no queda claro cómo los

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aspectos científicos de la propuesta pueden beneficiar al conocimiento de la biología de la especie dado que no existe un compromiso de hacer accesibles las técnicas reproductivas desarrolladas durante este proyecto. De hecho, el compromiso entre las empresas es el de confidencialidad de los resultados; f) La propuesta se basa en argumentos que mezclan razones científicas, humanitarias y económicas. La mezcla no favorece a la fuerza de la propuesta, más aún, la debilita. Los resultados producirán beneficios económicos más que científicos porque permitirán a las empresas involucradas contar con descendientes de orcas en cautiverio que darán continuidad a actividades educativo-recreativas. De otra manera están imposibilitados de obtener ejemplares en el marco de la legislación vigente.

Que el informe del MUSEO ARGENTINO DE CIENCIAS NATURALES "BERNARDINO RIVADAVIA" E INSTITUTO NACIONAL DE INVESTIGACIONES DE LAS CIENCIAS NATURALES, remitido a la SECRETARÍA DE AMBIENTE Y DESARROLLO SUSTENTABLE el día 23 de abril de 2002, se compone de dos opiniones separadas, vertidas por el Dr. Sergio MIQUEL, Secretario de Política Ambiental de la institución, y por el Dr. Hugo CASTELLO, jefe del Laboratorio de Mamíferos Marinos. En lo que hace a los aspectos vinculados con el eventual beneficio científico del programa reproductivo bajo examen, el primero de los asesoramientos citados concluye que: a) No queda claro cuál es la finalidad específica por la que el único ejemplar en cautiverio de esta rara especie argentina deba ser trasladado a ESTADOS UNIDOS DE AMÉRICA, al que se lo destinará no sólo a la reproducción sino a demostraciones de carácter circense; b) El traslado implica riesgos elevados para la salud y aún la vida del animal; c) Existen dudas acerca de la posibilidad concreta del apareamiento de ejemplares de orca que pertenecen a poblaciones distintas; d) Hoy existen procedimientos probados y seguros que evitan la necesidad del traslado de estos animales para lograr con éxito la fecundación de hembras. Asimismo, de la opinión expuesta por el Dr. Hugo CASTELLO, se extraen las siguientes conclusiones: a) No existen evaluaciones poblacionales de orcas en el país, en especial en las aguas de la PROVINCIA DE BUENOS AIRES; b) La reproducción de orcas en los ESTADOS UNIDOS DE AMÉRICA está muy avanzada

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tal como se comprueba en la bibliografía del acuario Sea World; c) Existen métodos de reproducción asistida que hubieran permitido la extracción de semen de KSHAMENK en SAN CLEMENTE DEL TUYÚ por electroeyaculación y el traslado de las muestras en nitrógeno líquido por avión a los ESTADOS UNIDOS DE AMÉRICA, donde dicho semen se hubiera podido usar para fecundar en forma artificial a las hembras de orcas disponibles; d) De acuerdo con la experiencia reunida por Sea World en su programa de cría de orcas, aproximadamente un tercio de todas las gestaciones de orcas reproducidas en sus instalaciones terminaron en abortos y una sola de dichas orcas nacida en cautiverio llegó a la madurez sexual; e) Falta experiencia en ambos Hemisferios respecto de la cruza de orcas o de delfines de poblaciones procedentes de hemisferios opuestos; f) Pueden surgir inconvenientes entre orcas reproductoras cuyos dialectos o vocalizaciones son distintos.

Que la nota de la DIRECCIÓN PROVINCIAL DE FISCALIZACIÓN DE LA ACTIVIDAD PESQUERA del MINISTERIO DE LA PRODUCCIÓN de la PROVINCIA DE BUENOS AIRES, suscripta el 10 de abril de 2002 por el Dr. José María CASAS, no contiene opinión técnica, sino, más bien, todo lo contrario. Hace diversas preguntas sobre distintos puntos y solicita a la ex DIRECCIÓN DE RECURSOS ICTÍCOLAS Y ACUÍCOLAS información técnica a fin de dilucidarlos.

Que la nota de ANIMAL PLANT HEALTH INSPECTION SERVICE (APHIS), escrita en idioma inglés y suscripta por Bárbara KOHN, del equipo de cuidados veterinarios de la institución citada, de fecha 12 de febrero de 2002, es, simplemente, una nota que explica los requisitos impuestos por la institución para los oceanarios por ella regulados, y no contiene información técnica sobre el programa reproductivo en cuestión.

Que, mediante la Providencia de la ex DIRECCIÓN DE RECURSOS ICTÍCOLAS Y ACUÍCOLAS Nº 88 del 31 de octubre de 2002, el Lic. Oscar H. PADÍN, director de esa repartición, aprobó el convenio de reproducción de MUNDO MARINO SOCIEDAD ANÓNIMA, sin fundamentación expresa en apoyo de la decisión adoptada, aunque con remisiones a los informes, dictámenes técnicos y notas precedentemente reseñados.

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Que, contra esa decisión, la FUNDACIÓN TIERRA SALVAJE interpuso recurso jerárquico, mediante escrito de fecha 25 de noviembre de 2002, impugnando el acto en virtud de diferentes vicios jurídicos, pero, especialmente, por su deficiente motivación y por los errores advertidos en su causa.

Que sin perjuicio de la ulterior resolución del recurso administrativo interpuesto, del resorte de la ministra de la jurisdicción, el suscripto es competente para avocarse en las actuaciones en trámite, no sólo a tenor de lo establecido en el artículo 3°, última parte, de la Ley Nacional de Procedimiento Administrativo N° 19.549, sino en razón de la previsión contenida en el artículo 4° de la Resolución de la ex SECRETARÍA DE RECURSOS NATURALES Y AMBIENTE HUMANO N° 351 del 18 de septiembre de 1995, según la cual, la autoridad de aplicación del REGLAMENTO PARA ESTABLECIMIENTOS QUE ALBERGAN MAMÍFEROS MARINOS es la SECRETARÍA DE RECURSOS NATURALES Y AMBIENTE HUMANO -actual SECRETARÍA DE AMBIENTE Y DESARROLLO SUSTENTABLE-, aunque pueda normalmente actuar, en tal carácter, a través de la DIRECCIÓN DE RECURSOS ICTÍCOLAS Y ACUÍCOLAS -actual DIRECCIÓN DE FAUNA SILVESTRE-. La avocación, en el presente caso, se presenta como una responsabilidad institucional y política ineludible, en razón del interés social comprometido con la decisión que, en definitiva, se adopte.

Que la Providencia de la ex DIRECCIÓN DE RECURSOS ICTÍCOLAS Y ACUÍCOLAS N° 88 del 31 de octubre de 2002 constituye, en la opinión del suscripto, un acto nulo, en los términos del artículo 14 de la Ley N° 19.549, pues carece de motivación suficiente y la decisión en ella adoptada es contraria a los óbices de entidad formulados, contra el convenio reproductivo de MUNDO MARINO SOCIEDAD ANÓNIMA, por las prestigiosas entidades con pericia en la materia que fueron especialmente consultadas para asesorar a la SECRETARÍA DE AMBIENTE Y DESARROLLO SUSTENTABLE respecto de la decisión por adoptar. En efecto, la providencia en cuestión omitió rebatir con argumentos razonables esas objeciones, lo mismo que las planteadas por las asociaciones ecologistas admitidas como partes en el expediente, y se limitó a exponer, de manera dogmática y, por tanto, con irrazonabilidad

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manifiesta, que *esta Dirección considera que existe mérito suficiente para aprobar el Convenio de Reproducción.*

Que, en atención a ello, la providencia precitada debe ser revocada, por razones de ilegitimidad, en los términos del artículo 17 de la Ley N° 19.549, sin que resulte necesario acudir, a tales fines, a una declaración judicial de su nulidad, pues el acto no quedó firme ni consentido respecto de todas las partes admitidas en el expediente, a tal punto que, como se dijo, la FUNDACIÓN TIERRA SALVAJE interpuso un recurso jerárquico contra aquél.

Que la Ley N° 22.421 declara *de interés público la fauna silvestre que temporal o permanentemente habita en el territorio de la República, así como su protección, conservación, propagación, repoblación y aprovechamiento racional*, entendiéndose por "fauna silvestre", entre otros animales, *los bravíos o salvajes que viven bajo control del hombre, en cautividad o semicautividad* (v. arts. 1° y 3°, ley cit.). La orca KSHAMENK, por lo tanto, constituye un ejemplar de la fauna silvestre a cuya protección y aprovechamiento racional corresponde proveer.

Que, en atención a los conceptos vertidos en los informes producidos por el CENTRO NACIONAL PATAGÓNICO y el MUSEO ARGENTINO DE CIENCIAS NATURALES "BERNARDINO RIVADAVIA" E INSTITUTO NACIONAL DE INVESTIGACIONES DE LAS CIENCIAS NATURALES, el suscripto considera que la aprobación del convenio reproductivo de MUNDO MARINO SOCIEDAD ANÓNIMA, y la consecuente autorización para la exportación del animal hacia el oceanario americano convenido, implicarían medidas contrarias al fin primordial de protección de los mamíferos marinos perseguido por el REGLAMENTO PARA ESTABLECIMIENTOS QUE ALBERGAN MAMÍFEROS MARINOS, toda vez que el traslado a tal lugar de destino comporta riesgos elevados para la salud y hasta la vida del animal, riesgos cuya severidad se potencia al advertirse, por un lado, que el convenio reproductivo propuesto no representa una etapa desarrollada de un programa orgánico de reproducción llevado a cabo por la institución interesada, sino que su estipulación parece ser una medida aislada y súbita, carente de antecedentes coherentes en los que pudiera contextualizarse; y, por el otro lado, la existencia de procedimientos probados y

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seguros que evitan la necesidad de traslado de los animales para lograr con éxito la fecundación de la hembra, como la reproducción asistida a partir de semen extraído por electroeyaculación y el traslado del mismo en muestras de nitrógeno líquido.

Que, ante la existencia de esos riegos severos para la salud y la vida del animal, admitir su exportación con fines reproductivos sería, además, una medida contraria a la racionalidad en el aprovechamiento del ejemplar, el cual, de otra parte, debe beneficiar esencialmente a la comunidad argentina. Así, no es razonable permitir la exportación del animal impidiendo que la comunidad argentina se beneficie con los resultados que podrían derivarse de la inserción del animal en adecuados programas de educación e investigación ambiental y ecológica, llevados a cabo en el marco del REGLAMENTO PARA ESTABLECIMIENTOS QUE ALBERGAN MAMÍFEROS MARINOS.

Que, por su adhesión voluntaria al REGLAMENTO PARA ESTABLECIMIENTOS QUE ALBERGAN MAMÍFEROS MARINOS, MUNDO MARINO SOCIEDAD ANÓNIMA no puede invocar un derecho de propiedad sobre el animal, con el consecuente contenido de uso y goce del mismo, que pudiera verse lesionado por una decisión de la SECRETARÍA DE AMBIENTE Y DESARROLLO SUSTENTABLE denegatoria de su solicitud de aprobación del convenio reproductivo en cuestión y de autorización de la exportación del ejemplar. En efecto, al acogerse al régimen de dicho reglamento, los propios actos de la parte interesada han exteriorizado la aceptación de su carácter de tenedor del animal, incompatible con toda pretensión dominial, pues el REGLAMENTO PARA ESTABLECIMIENTOS QUE ALBERGAN MAMÍFEROS MARINOS, además de sentar el principio de que la permanencia, en los oceanarios, de los ejemplares varados en las costas –como es el caso de KSHAMENK-, se permite a los fines de la rehabilitación, con miras a su liberación, define claramente que la permanencia del animal, temporaria, o definitiva, si la liberación no fuera posible, lo es en concepto de tenencia, no de propiedad (v. arts. 19 y 20, reglamento cit.).

Que ha tomado la intervención que le compete el servicio permanente de asesoramiento jurídico de la jurisdicción.

Que el suscripto es competente para el dictado del presente acto administrativo

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en virtud de lo establecido en el artículo 3°, última parte, de la Ley N° 19.549; en el artículo 4° de la Resolución de la ex SECRETARÍA DE RECURSOS NATURALES Y AMBIENTE HUMANO N° 351 del 18 de septiembre de 1995; en la Ley N° 22.421 y su Decreto reglamentario N° 666 del 18 de julio de 1997; en la Ley N° 22.344, aprobatoria de la CONVENCIÓN SOBRE COMERCIO INTERNACIONAL DE ESPECIES AMENAZADAS DE LA FAUNA Y FLORA SILVESTRS (CITES), y en el Decreto N° 522 del 5 de junio de 1997; y en el Decreto N° 357 del 21 de febrero de 2002.

Por ello,

EL SECRETARIO DE AMBIENTE Y DESARROLLO SUSTENTABLE

RESUELVE:

ARTÍCULO 1°.- Avocarse a la resolución del trámite iniciado por MUNDO MARINO SOCIEDAD ANÓNIMA el día 26 de diciembre de 2001 solicitando el otorgamiento de las autorizaciones necesarias para dar cumplimiento al convenio de reproducción descripto en el considerando segundo de la parte expositiva de esta medida.

ARTÍCULO 2°.- Revocar, por razones de ilegitimidad, la Providencia de la ex DIRECCIÓN DE RECURSOS ICTÍCOLAS Y ACUÍCOLAS N° 88 del 31 de octubre de 2002.

ARTÍCULO 3°.- Denegar a MUNDO MARINO SOCIEDAD ANÓNIMA la aprobación, bajo el carácter de "programa de reproducción", del convenio reproductivo al que se refiere el artículo 1° y, asimismo, toda otra autorización relacionada con el cumplimiento de dicho convenio.

ARTÍCULO 4°.- Registrese; notifíquese a MUNDO MARINO SOCIEDAD ANÓNIMA, a la FUNDACIÓN TIERRA SALVAJE y a la FUNDACIÓN FAUNA ARGENTINA; comuníquese a la DEFENSORÍA DEL PUEBLO DE LA NACIÓN; y archívese.

RESOLUCIÓN N°: 289 -

Ing. Fisl. CARLOS MERENSON
SECRETARIO DE AMBIENTE Y
DESARROLLO SUSTENTABLE

Ministry of Social Development
Environment and Sustainable Development Secretariat

Buenos Aires, March 24, 2003

HAVING REVIEWED the dossier filed with the ENVIRONMENT AND SUSTAINABLE DEVELOPMENT SECRETARIAT No. 70-3350/2001, and

WHEREAS, the granting of the necessary authorizations to comply with the orca breeding agreement, requested by MUNDO MARINO SOCIEDAD ANONIMA on December 26, 2001 is being processed through the abovementioned dossier,

WHEREAS, the subject-matter of the breeding agreement referred to in the authorizations requested by MUNDO MARINO SOCIEDAD ANONIMA, entered into in NEW YORK, UNITED STATES OF AMERICA, on September 6, 2001, with SIX FLAGS THEME PARKS INC., is to lend to such institution the young male specimen of *Orcinus orca* that has been held by the referred national oceanary since November 19, 1002, under the REGULATIONS FOR ESTABLISHMENTS HOSTING MARINE MAMMALS, Resolution No. 351 issued by the former SECRETARIAT OF NATURAL RESOURCES AND HUMAN ENVIRONMENT on September 18, 1995. The stated purpose of the loan thus agreed is to include the referred animal in a breeding program to be carried out on the premises of the foreign oceanary located in the UNITED STATES OF AMERICA during the time necessary for the gestation of three surviving youngs, the last of which would be returned together with the male specimen to MUNDO MARINO SOCIEDAD ANONIMA, upon the termination of the abovementioned program. That is to say that after the years necessary to breed the referred species, the specimen originally sent abroad would return to the country together with the last of its living youngs.

WHEREAS, in view of the background described above, it should be concluded that the authorizations requested by MUNDO MARINO SOCIEDAD ANONIMA are -under the framework of the REGULATIONS FOR ESTABLISHMENTS HOSTING MARINE MAMMALS and the rules that result from Wild Fauna Protection and Conservation Law No. 22,421 and its regulatory decree, and the CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES), approved by Law No.22,344- the following: a) the approval of the breeding program on account of which the permit of exporting to the UNITED STATES OF AMERICA the referred animal is requested; b) the export authorization by the national authority responsible for enforcing Law No. 22,421; and c) the relevant permit issued, on account of the export, by the administrative authority of the CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES).

WHEREAS, in the process under analysis the interested parties accepted are FUNDACION FAUNA ARGENTINA and FUNDACION TIERRA SALVAJE which, upon exercising the defense of the environment and the natural resources in their capacity as associations that aim at the protection of such collective impact right, under the terms of Section 43 of the National Constitution, have requested, by means of sundry briefs that the

ENVIRONMENT AND SUSTAINABLE DEVELOPMENT SECRETARIAT refrain from granting in favor of MUNDO MARINO SOCIEDAD ANONIMA the authorizations that would allow exporting the referred *Orcinus orca* specimen.

WHEREAS, since it became publicly known that there were proceedings pending with the national environmental authority aimed at obtaining the authorization to export the orca, the relevant areas of the ENVIRONMENT AND SUSTAINABLE DEVELOPMENT SECRETARIAT have received many messages, notes and e-mails, in most cases, against the export of the animal.

WHEREAS, the former ICHTHYIC AND AQUIFEROUS RESOURCES BUREAU, in its capacity as immediate enforcement authority of the REGULATIONS FOR ESTABLISHMENTS HOSTING MARINE MAMMALS, in addition to the two technical resolutions filed by MUNDO MARINO SOCIEDAD ANONIMA, requested the expert opinion of SOUTHERN CENTER OF SCIENTIFIC RESERACH (Centro Austral de Investigaciones Científicas), NATIONAL PATAGONIAN CENTER (Centro Nacional Patagónico), both reporting to the NATIONAL BOARD OF CIENTIFIC AND TECHNICAL RESEARCH (Consejo Nacional de Investigaciones Científicas y Técnicas - CONICET), and the ARGENTINE NATURAL SCIENCIES MUSEUM "BERNARDINO RIVADAVIA"AND NATIONAL INSTITUTE OF NATURAL SCIENCES RESEARCH. Furthermore, the dossier also includes a note by the FISHING INSPECTION BUREAU OF THE PROVINCE OF BUENOS AIRES depending from the MINISTRY OF PRODUCTION OF THE PROVINCE OF BUENOS AIRES and another from the ANIMAL PLANT HEALTH INSPECTION SERVICE (APHIS).

WHEREAS, the first technical expert opinion submitted by the party interested in the export, singed in December 2001 by Ricardo BASTIDA, Head of the Marine Mammals Work Team of the Marine Sciences Department, NATIONAL UNIVERSITY OF MAR DEL PLATA, and main researcher of the NATIONAL BOARD OF CIENTIFIC AND TECHNICAL RESEARCH (CONICET), states that *having analyzed all the possible alternatives in regard to orca Kshamenk, we arrive to the conclusion that the best of them - both for the animal and the institutions involved- is to lend it for breeding purposes to a renown company and scientific institution such as the one proposed by Mundo Marino S.A.*

WHEREAS, the second technical expert opinion submitted by MUNDO MARINO SOCIEDAD ANONIMA, signed on November 11, 2001 by Dr. Lorenzo VON FERSEN, scientific coordinator, stated that *in Kshamenk's case it is important to highlight that this specimen has a special value since it has shown to be a fertile male and with good social traits that make it a good breeding male. Moreover, another important aspect is its age given the fact that it is ten years old and is now in the beginning of its breeding stage. Experience has shown that in many species of cetaceans not all the specimens are potential breeders. The strategy of most institutions that hold specimens with good breeding potential, as is the case of Kshamenk, is to do all they can to allow these specimens to continue participating in breeding programs. Both of the aspects mentioned above, i.e. the possibility of socialization with specimens of their same species and the possibility of Kshamenk to procreate, are sufficient arguments to clearly support the assignment of Kshamenk to the Six Flags oceanary of the USA. It is important to highlight that the other*

two institutions that participate in this coordinated breeding program -SIX FLAGS, Ohio and MARINELAND, France- have noteworthy experience in the handling and reproduction of orcas in captivity.

WHEREAS, the report issued by the SOUTHERN CENTER OF SCIENTIFIC RESEARCH, signed on March 26, 2003 by Eduardo OLIVERO, head of the institute, states that the *this Center does not have specialists in subjects related with the captivity of marine mammals, and therefore we cannot issue an opinion on this matter.*

WHEREAS, the report issued by the NATIONAL PATAGONIAN CENTER, signed on March 27, 2002 by Drs. Enrique CRESPO, Mirtha LEWIS and Claudio CAMPAGNA, points out that: a) The project will contribute to the knowledge of the biology of this species in captivity conditions. Obtaining youngs from the Argentinean orca with any other specimen of the northern hemisphere will allow to procure rare genotypes in captivity that would not be otherwise obtained naturally; b) It is not clear that the genetic contribution of an orca from southern hemisphere populations could benefit the population of orcas in captivity. It will undoubtedly increase the genetic variability, but it will do so without the co-evolutionary effect of natural population genomes; c) The transported animal could die (which possibility is clearly provided for in the agreement entered into with the company that would be in charge of the breeding program); d) From the series of arguments presented by the company in regard to the alternatives for the orca it results that the actual contribution to the scientific knowledge is the implementation of assisted breeding techniques (insemination or embryo implantations). This possibility should be studied as its is highly successful in other animal species both domesticated and wild and could be considered as a prior step to the decision of natural fertilization. Furthermore, with this option, the animal would not have to be transported, only a group of specialists; e) As to the development of knowledge through natural fertilization, it is not clear whether the scientific aspects of the proposal can inure to the benefit of the knowledge of this species biology as there is no commitment to make the breeding techniques developed during this project available. In fact, the commitment between the companies is the confidentiality of the results; f) The proposal is based on arguments that mix scientific, humanitarian and economic reasons. This mix does not favor the strength of the proposal; on the contrary, it weakens it. The results will bring about economic benefits instead of scientific benefits because they will allow the companies involved to have orca descendents in captivity that will give continuity to educational-recreational activities. Actually, they are not allowed to obtain specimens otherwise under the legal framework in force.

WHEREAS, the report of the ARGENTINE NATURAL SCIENCIES MUSEUM "BERNARDINO RIVADAVIA" AND NATIONAL INSTITUTE OF NATURAL SCIENCES RESEARCH, sent to the ENVIRONMENT AND SUSTAINABLE DEVELOPMENT SECRETARIAT on April 23, 2002, is composed of two separate opinions, issued by Dr. Sergio MIQUEL, Secretary of Environmental Policy of such entity and by Dr. Hugo CASTELLO, chief of the Marine Mammal Laboratory. In connection with the aspects related to the eventual scientific benefit of the breeding program under analysis, the first opinion concludes that: a) It is not clear what is the specific purpose of exporting the only specimen in captivity of this rare Argentine species to the UNITED STATES OF AMERICA where it will not only be used for breeding purposes but also for circus shows;

c) there are doubts about the actual possibility that orca specimens belonging to different populations mate; d) At present, there are proven and safe procedures that avoid the need of transportation of such animals to successfully attain the fertilization of females. Furthermore, from the opinion given by Dr. Hugo CASTELLO we can draw the following conclusions: a) There are no orca population evaluations in our country, in particular in the waters of the PROVINCE OF BUENOS AIRES; b) The reproduction of orcas in the UNITED STATES OF AMERICA is in a very advanced stage as evidenced by the bibliography of Sea World; c) There are assisted breeding methods that could allow the withdrawal of KSHAMENK's semen in SAN CLEMENTE DEL TUYU through electroejaculation and the transportation by airplane of the samples in liquid nitrogen to the USA where such semen could be used to artificially fertilize the orca females available; d) According to the experience gathered by Sea World in its orca breeding program, about one third of all the gestations of orcas bred on their premises ended in miscarriages and only one of those orcas born in captivity reached its sexual maturity; e) There is lack of experience in both hemispheres in regard to crossing orcas or dolphins of populations from different hemispheres; f) Problems can arise between breeding orcas whose dialects or vocalizations are different.

WHEREAS, the note issued by the FISHING INSPECTION BUREAU OF THE PROVINCE OF BUENOS AIRES depending from the MINISTRY OF PRODUCTION OF THE PROVINCE OF BUENOS AIRES, signed on April 10, 2002 by Dr. José María CASAS, does not include a technical opinion but rather something totally opposite. He makes sundry questions about different issues and requests that the former ICHTHYIC AND AQUIFEROUS RESOURCES BUREAU furnish technical information in order to answer them.

WHEREAS, the note of the ANIMAL PLANT HEALTH INSPECTION SERVICE (APHIS), written in English and signed by Bárbara KOHN of the team of veterinary care of such institution, dated February 12, 2002, is simply a note that explains the requirements imposed by the institution to oceanaries governed by it, and does not include any technical information on the referred breeding program.

WHEREAS, by means of Resolution No. 88 of the former ICHTHYIC AND AQUIFEROUS RESOURCES BUREAU dated October 31, 2002, Mr. Oscar H. PADIN, head of such agency, approved the breeding agreement of MUNDO MARINO SOCIEDAD ANONIMA, without express grounds supporting the decision adopted, although some reference is made to the reports, technical expert opinions and notes mentioned above.

WHEREAS, FUNDACION TIERRA SALVAJE filed a defense against this decision by means of the brief dated November 25, 2002, challenging the act based on different legal defects and particularly on account of lack of motive and errors detected in its cause.

WHEREAS, irrespective of the resolution passed in connection with the administrative defense, passed by the minister of this jurisdiction, the undersigned has competent jurisdiction to hear in these proceedings not only on account of the provisions of Section 3, last part, of Administrative Procedural Law No. 19,549, but also due to the

provision included in Section 4 of Resolution No. 351 issued by the former SECRETARIAT OF NATURAL RESOURCES AND HUMAN ENVIRONMENT on September 18, 1995 whereby the authority responsible for enforcing the REGULATIONS FOR ESTABLISHMENTS HOSTING MARINE MAMMALS is the SECRETARIAT OF NATURAL RESOURCES AND HUMAN ENVIRONMENT -at present, the ENVIRONMENT AND SUSTAINABLE DEVELOPMENT SECRETARIAT-, even though it may normally act, in such capacity, through the ICHTHYIC AND AQUIFEROUS RESOURCES BUREAU -currently, the WILD FAUNA BUREAU. The participation in this act results from an unavoidable institutional and political responsibility resulting from the social interest involved in the decision finally adopted.

WHEREAS, Resolution No. 88 issued by the former ICHTHYIC AND AQUIFEROUS RESOURCES BUREAU on October 31, 2002 constitutes, in the opinion of the undersigned, a null and void act under the terms of Section 14 of Law No. 19,549, as it lacks sufficient motivation and the decision therein adopted is contrary to the objections made against the breeding agreement with MUNDO MARINO SOCIEDAD ANONIMA by the prestigious institutions expert in the subject that were specially consulted in order to advice the ENVIRONMENT AND SUSTAINABLE DEVELOPMENT SECRETARIAT in regard to the decision to be adopted. In fact, the resolution under discussion omitted to refute with reasonable arguments those objections, as well as the objections submitted by the environmentalist associations accepted as parties to the dossier, and it just exposed, in a dogmatic manner, and therefore, with manifest unreasonability, that *this Bureau considers that there is sufficient merit to approve the Breeding Agreement.*

WHEREAS, in view of the above, the abovementioned resolution must be revoked, for reasons of illegitimacy, under the terms of Section 17 of Law No. 19,549, without it being necessary to resort, for that purpose, to a court ruling of nullity, since the act did not become final nor was it consented to in respect to all the parties accepted in the dossier, to such an extent that, as it has been said, FUNDACIÓN TIERRA SALVAJE, filed a hierarchical defense against it.

WHEREAS, Law No. 22,421 declares *that the wild fauna temporarily or permanently dwelling the territory of Argentina is of public interest, as well as its protection, conservation, propagation, repopulation and rational exploitation*, "wild fauna" being *wild animals that live under the control of the man, in captivity or semi-captivity* (sections 1 and 3 of abovementioned law). Therefore, KSHAMENK constitutes a specimen of wild fauna which is to be protected and rationally exploited.

WHEREAS, in view of the reports issued by the NATIONAL PATAGONIAN CENTER and the ARGENTINE NATURAL SCIENCIES MUSEUM "BERNARDINO RIVADAVIA"AND NATIONAL INSTITUTE OF NATURAL SCIENCES RESEARCH, the undersigned believes that the approval of the breeding agreement of MUNDO MARINO SOCIEDAD ANONIMA, and the authorization to export the animal to the agreed American oceanary would entail measures contrary to the fundamental purpose of the protection of marine mammals sought by the REGULATIONS FOR ESTABLISHMENTS HOSTING MARINE MAMMALS, as the transportation to such destination entails serious risks to the health and even the life of the animal, whose severity

worsens when noting that, on the one hand, the breeding agreement does not represent a developed stage of an organic breeding program carried out by the interested institution, but its provision seems to be an isolated and sudden measure, lacking any consistent background where it could be contextualized; and, on the other hand, the existence of proven and safe procedures that avoid the need of transportation of such animals to successfully attain the fertilization of females, such as assisted breeding based on semen withdrawn by electroejaculation and its transportation in liquid nitrogen.

WHEREAS, in view of such serious risks for the health and the life of the animal, approving its export for breeding purposes would also be a measure contrary to the rationality of the exploitation of the specimen which, in turn, has to mainly benefit the Argentine community. Thus, it is not reasonable to allow the export of the animal preventing the Argentine community from benefiting from the results from including the animal in adequate educational programs or environmental research, carried out under the framework of the REGULATIONS FOR ESTABLISHMENTS HOSTING MARINE MAMMALS,.

WHEREAS, MUNDO MARINO SOCIEDAD ANONIMA by voluntarily accepting the REGULATIONS FOR ESTABLISHMENTS HOSTING MARINE MAMMALS cannot invoke a right to property over the animal with the ensuing right of use and enjoyment thereof, that could be damaged by a decision of the ENVIRONMENT AND SUSTAINABLE DEVELOPMENT SECRETARIAT that denies the request of approval of the relevant breeding agreement and the authorization to export the specimen. In fact, by accepting the regime of such regulations, the acts of the interested party itself have evidenced its acceptance of its capacity as holder of the animal, incompatible with any claim to property, since the REGULATIONS FOR ESTABLISHMENTS HOSTING MARINE MAMMALS, apart from laying the principle that permanence in oceanaries of specimens beached on the shores -as KSHAMENK's case- is allowed only for rehabilitation purposes, and future release, clearly states that the permanence of the animal, either temporarily or finally, if it cannot be released, vests a right to hold but not to property (sections 19 and 20, abovementioned regulations).

WHEREAS, the permanent service of legal counsel of the jurisdiction has intervened.

WHEREAS, the undersigned has competent jurisdiction to issue this administrative act under the provisions of Section 3, last part, of Law No. 19,549; Section 4 of Resolution No. 351 issued by the former SECRETARIAT OF NATURAL RESOURCES AND HUMAN ENVIRONMENT on September 18, 1995; law No. 22,421 and its regulatory Decree No. 666 of July 18, 1997; Law No. 22,344 that approves the CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES) and Decree No. 522 of June 5, 1997 and Decree No. 357 of February 21, 2002.

NOW THEREFORE,

THE SECRETARY OF THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT
RESOLVES:

SECTION 1 – To take over the resolution of the proceedings started by MUNDO MARINO SOCIEDAD ANONIMA on December 26, 2001 requesting that the necessary authorizations be granted in order to perform the breeding agreement described in the second whereas clause of this measure.

SECTION 2 – To revoke, on illegitimacy reasons, Resolution No. 88 issued by the former ICHTHYIC AND AQUIFEROUS RESOURCES BUREAU on October 31, 2002.

SECTION 3 – To deny the approval to MUNDO MARINO SOCIEDAD ANOMINA, under the qualification of "breeding program", of the breeding agreement mentioned in Section 1 and any other authorization related to the performance thereof.

SECTION 4 - Be it recorded; be it notified to MUNDO MARINO SOCIEDAD ANONIMA, FUNDACION TIERRA SALVAJE and FUNDACION FAUNA ARGENTINA; be it communicated to the NATIONAL OMBUSDMAN OFFICE; and filed.

RESOLUTION No. 289

(Signature)
Eng. Carlos Merenson
Secretary of the Environment and
Sustainable Development

Secretaria de Ambiente
y Desarrollo Sustentable
Mesa Gral de Entradas, Salidas y Archivo

NOTA Nº 003999
AREA: 15 50 hs.

US - AJURIDICOS - DIA - DNGA - AMT.DNGA - EV.DNGA - U.REGISTROS - DNRNYCB - DPAYDS - COORD.CONS.BIODIV. - DOA - DCA - DPYGC - DFS - FAUNA M - DCSYLD - DB - OZONO - ARH - UCC - DCCF - DGCA - PGC - PNMF -

FOLIOS: 17 - Anexos 33 Folios

Horario de atención al Público 10 hs. a 17 hs.

INTERPONE RECURSO JERÁRQUICO

Sra. Ministro
Ministerio de Desarrollo Social de la Nación
Lic. Nélida Doga

Ref. Expte. Nº 70-3350/2001

Ricardo Méndez, por la representación ya acreditada de **MUNDO MARINO S.A.**, con domicilio constituido a efectos de estas actuaciones en Avda. Córdoba 937, 3er. Piso Of. 2, Ciudad de Buenos Aires, a la Sra. Ministro digo:

I. Objeto

Vengo a interponer recurso jerárquico, en los términos de los artículos 89 a 92 del Decreto 1759/72 reglamentario de la Ley Nacional de Procedimientos Administrativos ("Ley de Procedimientos Administrativos"), contra la Resolución 289/03 de fecha 24 de marzo de 2003 emitida por el Sr. Secretario a cargo de la Secretaría de Ambiente y Desarrollo Sustentable de la Nación. Esta resolución fue notificada a mi parte con fecha 24 de marzo de 2003, resultando por lo tanto formalmente procedente el presente recurso.

II. La resolución recurrida

Mediante la resolución recurrida, el Secretario de Ambiente y Desarrollo Sustentable de la Nación resuelve: (i) avocarse a la resolución del trámite iniciado por Mundo Marino S.A. al solicitar las autorizaciones necesarias para dar cumplimiento al convenio de reproducción celebrado en relación con el ejemplar de *Orcinus orca* identificada como Kshamenk; (ii) revocar por razones de ilegitimidad la Providencia Nº 88/02 de fecha 31 de octubre de 2002 emitida por la entonces Dirección de Recursos Ictícolas y Acuícolas de la Nación, mediante la cual se aprobó el programa reproductivo propuesto por Mundo Marino S.A. para la orca Kshamenk; y (iii) denegar a Mundo Marino S.A. la aprobación del programa reproductivo propuesto para la orca Kshamenk y toda otra autorización relacionada con el cumplimiento de dicho programa.

Atento que la resolución recurrida resuelve denegar todas las autorizaciones relacionadas con el cumplimiento del programa reproductivo propuesto por Mundo Marino S.A. para la orca Kshamenk, mi representada da por

denegado asimismo el recurso de reconsideración por ella interpuesto a fs. 748/754.

La resolución recurrida considera que la Providencia Nº 88/02 es un acto administrativo nulo, toda vez que la misma adopta una decisión contraria a las objeciones planteadas por prestigiosas entidades con pericia en la materia que fueron consultadas al respecto y por las asociaciones admitidas como parte en el expediente sin rebatir con argumentos razonables tales objeciones, hecho que la torna una decisión carente de motivación suficiente, dogmática e irrazonable.

Por otra parte, la resolución recurrida fundamenta la denegatoria de las autorizaciones necesarias para dar cumplimiento al programa reproductivo propuesto para la orca Kshamenk en los siguientes motivos: (i) la aprobación del programa de reproducción implicaría una medida contraria al fin primordial de protección de los mamíferos marinos perseguido por la Resolución SRNyAH Nº 351/95 ("Reglamento de Oceanarios"), en cuanto el traslado de la orca Kshamenk al lugar de destino comporta riesgos elevados para su salud y su vida; (ii) el programa reproductivo propuesto no representa una etapa desarrollada de un programa orgánico de reproducción, sino que su estipulación parece ser una medida aislada y súbita, carente de antecedentes coherentes en los que pudiera contextualizarse; (iii) existen procedimientos probados y seguros que evitan la necesidad de traslado de los animales para lograr con éxito la fecundación de la hembra, como la reproducción asistida a partir de semen extraído por electroeyaculación y el traslado del mismo en muestras de nitrógeno líquido; y (iv) la aprobación del programa de reproducción sería una medida contraria a la racionalidad en el aprovechamiento del ejemplar, que debe beneficiar esencialmente a la comunidad argentina mediante su inserción en adecuados programas de educación e investigación ambiental y ecológica, llevados a cabo en el marco del Reglamento de Oceanarios.

Finalmente, la resolución recurrida manifiesta que Mundo Marino S.A. no puede invocar la lesión a su derecho de propiedad sobre la orca Kshamenk ante la denegatoria de las autorizaciones solicitadas. En efecto, la resolución recurrida entiende que el régimen del Reglamento de Oceanarios resulta incompatible con cualquier pretensión dominial sobre mamíferos marinos, en tanto tal régimen define que la permanencia de los mismos en los oceanarios lo es en concepto de tenencia y no de propiedad. Asimismo, la resolución recurrida considera que Mundo Marino S.A. ha aceptado su carácter de mero tenedor de la orca Kshamenk al acogerse al régimen del Reglamento de Oceanarios.

III. Los vicios que afectan a la resolución recurrida

La resolución recurrida debe ser dejada sin efecto, puesto que carece del elemento causa ya que no se sustenta en los hechos ni en el derecho aplicable (artículo 7, inciso "b" de la Ley de Procedimientos Administrativos).

A continuación se explica cómo el vicio antes enunciado afecta a la resolución recurrida.

III.a. Revocación de la Providencia N° 88/02

Como ya se adelantó, la resolución recurrida revoca la Providencia N° 88/02, porque considera que la decisión contenida en la misma se aparta de las objeciones planteadas por entidades científicas y ecologistas sin rebatirlas con argumentos razonables, lo que la torna en un acto administrativo nulo carente de motivación.

La Providencia N° 88/02 fue emitida el 31 de octubre de 2002 por la entonces Dirección de Recursos Ictícolas y Acuícolas de la Nación, autoridad de aplicación del Reglamento de Oceanarios y autoridad científica de la Convención sobre el Comercio Internacional de Especies Amenazadas de Flora y Fauna Silvestres ("Convención CITES", Ley 22.344).

La Providencia N° 88/02 es breve: manifiesta que luego de evaluar las actuaciones y considerando especialmente los dictámenes de la Dirección General de Asuntos Jurídicos del Ministerio de Desarrollo Social y las opiniones del Centro Austral de Investigaciones Científicas, del Centro Nacional Patagónico, de la Dirección de Fiscalización de la Actividad Pesquera de la Provincia de Buenos Aires, del Museo Argentino de Ciencias Naturales "Bernardino Rivadavia" y del Animal and Plant Health Inspection Service de los Estados Unidos de América, esa Dirección "*considera que existe mérito suficiente para aprobar el Convenio de Reproducción... de acuerdo a lo establecido en el artículo 8° del Reglamento de Oceanarios*".

El artículo 8 del Reglamento de Oceanarios dispone que "*en el caso de que un oceanario desarrolle un programa de reproducción de mamíferos marinos, éste deberá contar con la aprobación de la autoridad de aplicación*".

Es inexacto lo que manifiesta la resolución recurrida, en el sentido de que la Providencia N° 88/02 (i) se aparta de lo dicho por las entidades con pericia en la materia y (ii) no rebate con argumentos razonables las objeciones planteadas por tales entidades y los óbices señalados por las asociaciones tenidas como parte en el expediente.

III.a.1. La Providencia N° 88/02 y las opiniones con pericia en la materia

Cabe señalar que no puede decirse que la Dirección de Recursos Ictícolas y Acuícolas contradiga lo dicho por las entidades con pericia en la materia. Las entidades con pericia en la materia manifestaron opiniones diferentes, de modo que la falta de uniformidad de estos pronunciamientos impide que pueda hablarse de contradicción.

En el expediente obran ocho opiniones emitidas por entidades con pericia en la materia, de las cuales seis son expresamente mencionadas por la resolución recurrida en sus considerandos.

1. En primer lugar, se encuentra la opinión emitida por el Dr. Ricardo Bastida, que se pronunció a favor del programa de reproducción propuesto por mi representada en un extenso informe de 15 hojas (fs. 16/32).

El informe analiza minuciosamente todas las posibilidades existentes respecto del futuro de la orca Kshamenk. En mérito a la brevedad, a continuación se enumeran los temas abordados por este informe: revisión de los antecedentes del ejemplar, situación actual del animal, permanencia en el lugar actual, posibilidades de formación de una nueva pareja, liberación de Kshamenk, relevamiento de la información existente sobre liberación de cetáceos, recomendaciones en relación con la liberación de cetáceos, información actualizada sobre inseminación artificial y recomendaciones al respecto, integración del animal a un programa de reproducción, consideraciones sobre las distintas alternativas, revisión de los requisitos para un traslado y préstamo, análisis de los antecedentes del convenio reproductivo y conclusión.

El Dr. Bastida es Investigador Principal del CONICET y es Profesor Titular del Departamento de Ciencias Marinas y Director del Grupo de Trabajo Mamíferos Marinos en la Universidad de Mar del Plata. Su opinión merece especial consideración, atento que se trata del más importante especialista en Argentina sobre cetáceos -tanto en la naturaleza como en cautiverio-, cuya autoridad profesional es reconocida internacionalmente. El Dr. Bastida es frecuentemente consultado tanto por organismos estatales (nacionales, provinciales y municipales) como por entidades privadas. Por ejemplo, en el ámbito del derecho la opinión del Dr. Bastida ha sido especialmente merituada por el Juzgado Nº 2 de Primera Instancia en lo Contencioso Administrativo Federal en la sentencia dictada en la causa "*Kattan, Alberto E. y otro c. Poder Ejecutivo Nacional*" con fecha 10 de mayo de 1983, que impidió la captura de ejemplares de la especie *Cephacrhynschus commersonii* (delfines o toninas overas). El hecho de que la opinión del Dr. Bastida haya sido aportada por mi representada y de que en el pasado Mundo Marino S.A. haya tenido el privilegio de tenerlo (al Dr. Bastida) como su Director Científico, de ninguna manera pueden restar mérito a su autoridad profesional en la materia.

La Providencia Nº 88/02, en cuanto considera que existe mérito para aprobar el programa de reproducción propuesto por Mundo Marino S.A., coincide con lo dictaminado por el Dr. Bastida que dijo que "*habiendo analizado todas las alternativas posibles a adoptar con la orca Kshamenk, se llega a la conclusión de que la mejor de ellas -tanto para el animal como para las instituciones involucradas- es cederla en préstamo reproductivo a una institución de prestigio empresarial y científico como la que ha propuesto Mundo Marino S.A.*".

2. Por su parte, el Centro Austral de Investigaciones Científicas (fs. 220), al ser consultado por la entonces Dirección de Recursos Ictícolas y Acuícolas, manifestó que la entidad "*no cuenta con especialistas en temas relacionados al cautiverio de mamíferos marinos, lo que nos impide opinar sobre el particular*". En relación con esta respuesta lógicamente no puede decirse que su contenido se oponga a la Providencia Nº 88/02. En cambio sirve para guiar los razonamientos para evaluar los informes técnicos sobre el programa reproductivo, tal como ellos afirman deben emitir opinión los especialistas en mamíferos marinos en cautiverio

3. La entonces Dirección de Recursos Ictícolas y Acuícolas también consultó al Centro Nacional Patagónico del CONICET, el cual emitió un dictamen brindando su opinión sobre el tema (fs. 230/232). En síntesis, el Centro manifestó : (i) que el traslado de la orca es irrelevante desde la perspectiva de la conservación de las especies animales y sí es relevante bajo el punto de vista del bienestar individual del animal; (ii) que el proyecto contribuirá al conocimiento de la biología reproductiva de esta especie en condiciones de cautiverio, que las crías se verían beneficiadas por el valor híbrido, que si bien las orcas progenitoras pertenecen a poblaciones diferentes hay entre ellas continuidad genética, y que existen aspectos dudosos tales como si el aporte genético de una orca del Hemisferio sur pueda beneficiar a la población de orcas en cautiverio además de aportarle variabilidad genética; (iii) los beneficios relacionados con el bienestar del animal y los beneficios vinculados al proyecto reproductivo quedarán sin efecto si ocurriera la muerte de la orca Kshamenk; (iv) el proyecto resultará en un aporte concreto al conocimiento científico en lo relativo a la implementación de técnicas de reproducción asistida; (v) las técnicas de reproducción asistida han tenido un importante desarrollo en los últimos años en otras especies, y para esta especie se ha logrado el nacimiento de una orca a través de la inseminación artificial; su aplicación en este caso tendría la ventaja de que no haría necesario el traslado del animal y su readaptación al oceanario estadounidense, pero no resolvería su situación de soledad; (vi) no queda claro cómo los beneficios derivados del proyecto alcanzarían a la comunidad científica, dado que las empresas participantes en tal proyecto han pactado la confidencialidad de los resultados; y (vii) la propuesta se sustenta en argumentos científicos, humanitarios y económicos; los beneficios económicos serán mayores que los científicos porque permitirá a las empresas involucradas contar con descendientes de orcas en cautiverio que darán continuidad a actividades educativo-recreativas.

De este dictamen no se colige una opinión negativa sobre el programa de reproducción. Por el contrario, el Centro Nacional Patagónico deja en claro que el proyecto presentado por Mundo Marino S.A. redundará en beneficios en lo relativo al bienestar individual de la orca Kshamenk (los que no se deben confundir con temas relacionados con la conservación de la especie que para este caso son irrelevantes), contribuirá al conocimiento de la biología reproductiva de la especie en cautiverio, permitirá a las entidades participantes obtener descendientes para dar continuidad a sus actividades educativas y recreativas, hechos que lógicamente dependen de la

supervivencia del animal. En consecuencia, tampoco puede decirse que la Providencia Nº 88/02, en cuanto considera que existe mérito suficiente para aprobar el programa reproductivo de Mundo Marino S.A., constituya una decisión opuesta al dictamen en cuestión.

4. La Dirección de Recursos Ictícolas y Acuícolas de la Nación también consultó al Museo Argentino de Ciencias Naturales "Bernardino Rivadavia", entidad que respondió acompañando un informe elaborado por el Lic. Hugo P. Castello, a cargo del Laboratorio Mamíferos Marinos.

Este informe es el único manifiestamente contrario a la realización del programa reproductivo y por lo tanto del mismo sí puede decirse que se encuentra en oposición a lo resuelto en la Providencia Nº 88/02.

Más adelante nos referimos en detalle al contenido de este informe y al análisis que sobre él hizo la entonces Dirección de Recursos Ictícolas y Acuícolas de la Nación.

5. Otro organismo consultado por la entonces Dirección de Recursos Ictícolas y Acuícolas es la ex Dirección de Fiscalización de la Actividad Pesquera (actual Subsecretaría de Actividades Pesqueras) dependiente del Ministerio de Asuntos Agrarios y Producción de la Provincia de Buenos Aires. Este órgano respondió la consulta realizando una serie de observaciones técnicas.

De cualquier manera, la postura de las autoridades competentes de la Provincia de Buenos Aires ha quedado sentada mediante la emisión de la Resolución 33/03 del Ministerio de Asuntos Agrarios y Producción de la Provincia de Buenos Aires de fecha 6 de febrero de 2003, mediante la cual el Ministro resolvió autorizar el transporte de la orca Kshamenk expidiendo en consecuencia "*la guía de tránsito, a favor de la firma Mundo Marino S.A. por la transferencia, egreso y transporte del ejemplar de orca (Orcinus orca) denominado Kshamenk, por el trayecto comprendido entre el Oceanario propiedad de la firma mencionada... y el Aeropuerto Internacional de Ezeiza*" (fs. 950).

Considerando esto, puede decirse que la Providencia Nº 88/02, en cuanto considera que existe mérito suficiente para aprobar el programa reproductivo propuesto por Mundo Marino S.A., se encuentra en la misma línea que el Ministerio de Asuntos Agrarios y Producción de la Provincia de Buenos Aires que resolvió conferir una de las autorizaciones necesarias para la ejecución del referido proyecto.

6. En adición a los dictámenes antes referidos, en el expediente obran agregados tres informes adicionales aportados por Mundo Marino S.A., todos ellos favorables a la realización del programa reproductivo propuesto. Dos de estos informes no son mencionados en la resolución recurrida.

La resolución recurrida sí menciona la opinión emitida por el Dr. Lorenzo Von Fersen, coordinador científico de Tiergarten Nuergerg de Alemania,

quien expresó que *"Las orcas son especies sociales y su nivel de bienestar psíquico y físico en cautiverio como también el desarrollo y desenvolvimiento de comportamientos específicos de la especie depende entre otros factores de las interacciones sociales con otros animales de su misma especie... La evolución y desarrollo de los zoológicos modernos ha demostrado que el manejo de animales silvestres no sólo significa asegurar el bienestar físico psíquico, igualmente importante es el establecimiento de una población autosustentable. A través de programas coordinados de reproducción, los cuales en muchos casos requieren el movimiento de animales de una institución a otra, se han logrado hoy en día grandes progresos*" (fs. 33/34).

La American Zoo and Aquarium Association, Marine Mammal Taxom Advisory Group de los Estados Unidos, (Grupo Consejero Taxom de Mamíferos Marinos), es la organización que aprueba y supervisa la transferencia de mamíferos marinos entre establecimientos zoológicos de los Estados Unidos de América, en el marco de programas cooperativos de reproducción. Este informe enumera los beneficios que producirá la ejecución del proyecto propuesto por Mundo Marino S.A. para Kshamenk y concluye manifestando su apoyo al respecto, declarando "es lo mejor para este animal" (fs. 37/40).

La Alliance of Marine Mammal Parks and Aquariums, entidad que congrega la mayor experiencia profesional sobre mantenimiento, manejo y reproducción de mamíferos marinos del mundo, declaró que "*Es bueno saber que el animal será puesto en pareja con uno de su misma especie en este país, no sólo por el potencial genético, sino por el bienestar del animal... Los mamíferos marinos sólo deberían ser mantenidos aislados con el fin de tratamiento médico*" (fs. 35/36).

7. A estos informes se agrega la opinión que la Fundación Vida Silvestre, que también se pronunció a favor de la realización del programa reproductivo. Junto con la presente se acompaña copia del artículo publicado en la revista de esta organización del mes de octubre de 2002. Mi representada considera conveniente hacer mención de este hecho, en atención a que esta fundación constituye la organización no gubernamental más importante en Argentina en materia de conservación de especies y ambiental.

De lo expuesto se concluye que lo resuelto por la Providencia Nº 88/02 tiene ajuste a la opinión de la mayoría de las entidades con pericia en la materia y sólo se encuentra en franca oposición con la opinión vertida por el Museo Argentino de Ciencias Naturales "Bernandino Rivadavia".

Por lo tanto, la resolución recurrida, cuando manifiesta que la Providencia Nº 88/02 se aparta de lo dicho por las entidades con pericia en la materia, no se sustenta en los hechos aplicables, por lo que carece de causa en los términos del artículo 7, inciso "b" de la Ley de Procedimientos Administrativos.

III.a.2. La Providencia N° 88/02 no rebate con argumentos razonables las objeciones planteadas por las entidades con pericia en la materia y por las asociaciones ecologistas tenidas como parte en el expediente

La resolución recurrida realiza una dura crítica de la Providencia N° 88/02, calificándola como una decisión carente de motivación suficiente, dogmática e irrazonable. En este sentido, la resolución recurrida considera que la entonces Dirección de Recursos Ictícolas y Acuícolas de la Nación aprobó el programa de reproducción propuesto por Mundo Marino S.A. sin antes realizar análisis alguno de las objeciones planteadas al respecto por las entidades con pericia en la materia y por las entidades ecologistas tenidas como parte en el expediente.

Es verdad que la Providencia N° 88/02 es breve y que allí no aparece el análisis de las objeciones planteadas por el Museo Argentino de Ciencias Naturales "Bernardino Rivadavia" (como se explicó antes, no existe otra entidad con pericia en la materia que se haya manifestado en oposición a la ejecución del programa) y por las entidades tenidas como parte en el expediente (tanto la Fundación Tierra Salvaje como la Fundación Fauna Argentina han sido tenidas como parte en el expediente, aunque la principal oposición ha sido llevada adelante por la primera organización).

Sin embargo, esto no significa que la Dirección de Recursos Ictícolas y Acuícolas de la Nación no haya analizado las objeciones. Por el contrario, a lo largo del expediente existen varios informes emitidos por esa Dirección analizando tales objeciones.

El Museo Argentino de Ciencias Naturales "Bernardino Rivadavia" y la Fundación Tierra Salvaje han manifestado objeciones similares en relación con el programa reproductivo propuesto por Mundo Marino S.A., similitud entendible por la manifestación pública de agradecimiento que la Fundación Tierra Salvaje hace al Lic. Castello por la información y asesoramiento respecto de este tema (se acompaña copia de un mensaje electrónico circulado recientemente por la Fundación Tierra Salvaje). A continuación se sintetizan las principales objeciones planteadas por estas entidades y se comenta el análisis realizado al respecto por la Dirección de Recursos Ictícolas y Acuícolas de la Nación con anterioridad al dictado de la Providencia N° 88/02, según consta en el expediente de la referencia.

- Objeciones relacionadas con la supuesta actuación sospechosa de Mundo Marino S.A. en el caso del varamiento y rehabilitación de la orca Kshamenk

Tanto el Museo Argentino de Ciencias Naturales "Bernardino Rivadavia" como la Fundación Tierra Salvaje han manifestado que el varamiento de la orca Kshamenk no habría sido un varamiento accidental sino una captura realizada por Mundo Marino S.A., y que el animal no necesitaba atención médica veterinaria especializada.

Sin embargo, ni el Museo ni la Fundación han aportado pruebas que acrediten estos extremos. Estas pruebas han sido expresamente reclamadas por la Dirección de Fauna y Flora Silvestres en una nota dirigida al Ministro de Producción de Chubut en respuesta a su carta de oposición al programa reproductivo. En esta nota, la Dirección de Fauna y Flora Silvestres ha dicho que "*resultaría importante el aporte de la provincia de Chubut tendiente a dilucidar el origen real del animal*" (fs. 669/670). Sin embargo, el Ministro de Producción de Chubut se ha limitado a contestar esta solicitud diciendo que "*estos aportes de información, están referidos a los informes que la Organización Ambientalista «Fundación Tierra Salvaje» (WEF), aportará para contribuir al esclarecimiento del origen del animal*" (fs. 770). Hasta el presente tales pruebas no han sido presentadas. Esta falta de probanza convierte a las imputaciones en meras conjeturas, inferencias y suposiciones subjetivas (y, por supuesto, interesadas). Estas afirmaciones, al ser realizadas por el Museo Argentino de Ciencias Naturales "Bernardino Rivadavia", restan seriedad y credibilidad al informe producido por esta institución, al cual se le ha atribuido en autos una importancia que ciertamente no merece.

Cabe destacar que la orca Kshamenk fue hallada en 1992 en las planicies fangosas de la Bahía de Samborombón, luego de aproximadamente 72 hs. de varamiento, con severas quemaduras por su prolongada exposición al sol. El rescate y la evolución de la rehabilitación de la orca Kshamenk fueron informados por Mundo Marino S.A. a las autoridades nacionales y provinciales, sin perjuicio de que en esa fecha no existía procedimiento especial alguno para la incorporación de animales en oceanarios con fines de rehabilitación. Se acompañan al presente escrito las fotografías de las lesiones que padecía el animal y que oportunamente fueron observadas por las autoridades intervinientes. Por ejemplo, el entonces Subsecretario de Recursos Naturales y Ambiente Humano, Dr. Humberto Ruchelli, y la entonces Directora de Recursos Ictícolas y Acuícolas, Lic. Marcela Álvarez, hicieron una inspección y pudieron verificar la situación del animal en cuestión. Estas fotografías, junto con algunos fotogramas de una filmación, fueron entregadas personalmente por mi representada al actual Secretario de Ambiente y Desarrollo Sustentable, por lo que esta autoridad se encuentra en conocimiento de la falsedad de las manifestaciones efectuadas por las entidades antes citadas.

En relación con este tema, Mundo Marino S.A. también ha acompañado pruebas del carácter usual de varamientos en las zonas aledañas al establecimiento "Mundo Marino" en San Clemente del Tuyú (carta náutica de la Bahía de Samborombón, noticias periodísticas relacionadas con varamientos, testimonio del padre Mamerto Menapace cuando encontró varada a la orca Belén, copia de la Resolución 150/99 del entonces Ministerio de Asuntos Agrarios de la Provincia de Buenos Aires que designa a la Fundación Mundo Marino como Centro Provincial de Rescate y Rehabilitación de Fauna Marina, ver fs. 473/480, 499/507, 536/539) y pruebas relacionadas con el varamiento accidental de la orca Kshamenk (testimonios notariales de personas que intervinieron en el rescate de la orca, correspondencia intercambiada entre Mundo Marino S.A. y las autoridades

entonces competentes con motivo del varamiento, manifestaciones de los especialistas intervinientes en la rehabilitación del animal, ver fs. 301/309, 335/336, 496/498).

Con la aparición de los reglamentos provincial y nacional de oceanarios en 1995 (Resolución SRNyAH 351/95 y Decreto Provincial Nº 3237/95 respectivamente), Mundo Marino S.A. obtuvo la habilitación del establecimiento y el reconocimiento de los legítimos derechos sobre los animales que allí se albergaban, tal como surge de la resolución extendida por la entonces Dirección de Fiscalización de la Actividad Pesquera de la Provincia de Buenos Aires (Resolución Nº 008/96) y del certificado de ingreso extendido por la Dirección de Recursos Ictícolas y Acuícolas de la Nación. Por lo demás, cabe destacar que desde el 19 de noviembre de 1992 en que salvó la vida del animal liberándolo de un varamiento y rehabilitándolo, Mundo Marino S.A. ha detentado la posesión pública y pacífica de la orca Kshamenk, lo que representa una posesión por más de diez años llevada a cabo bajo supervisión de las autoridades competentes, y sin haber recibido cuestionamiento oficial alguno de entidad o persona al respecto.

La Dirección de Recursos Ictícolas y Acuícolas de la Nación se refirió expresamente al tema del origen de la orca al responder la consulta del Servicio Nacional de Pesquerías Marinas de los Estados Unidos de América (National Marine Fisheries Service - NMFS) sobre si la orca Kshamenk había sido capturada en forma legal y si la misma se encontraba en posesión legal de Mundo Marino S.A. En su respuesta obrante a fs. 412/415, la Dirección de Recursos Ictícolas y Acuícolas de la Nación (i) describió las circunstancias en las que se produjo el varamiento de la orca Kshamenk en la Bahía de Samborombón; (ii) hizo referencia a la comunicación cursada en esa oportunidad por Mundo Marino S.A. a las autoridades de la Provincia de Buenos Aires; y (iii) manifestó que Mundo Marino S.A. ha sido habilitado en el marco del Reglamento de Oceanarios que exige para los oceanarios preexistentes a esta norma la necesidad de obtener la habilitación del establecimiento para lo cual debe aportar información, entre otras cosas, sobre la forma de obtención de los ejemplares que alberga (ver artículo 3, inciso "b" y artículo 4 del Reglamento de Oceanarios). Posteriormente, la Dirección de Recursos Ictícolas y Acuícolas de la Nación volvió sobre el tema en el informe remitido a la Dirección Nacional de Desarrollo Sustentable, donde se refirió a las objeciones planteadas por la Fundación Tierra Salvaje en relación con el varamiento de la orca Kshamenk. En efecto, a fs. 675/676 la Dirección de Recursos Ictícolas y Acuícolas expresó que "*con respecto a la vulneración por parte de Mundo Marino S. A del artículo 3° inciso b) del Reglamento de Oceanarios, argüida la misma por la Fundación Tierra Salvaje..., cabe referir que tal vulneración deviene desvirtuada, conforme las constancias obrantes en relación en nuestros archivos*".

Por lo demás, no se advierte cuál sería el motivo de Mundo Marino S.A. para fraguar un varamiento en el año 1992, cuando todavía no existía

normativa alguna referida al mantenimiento de los mamíferos marinos en cautiverio.

En consecuencia, la Dirección de Recursos Ictícolas y Acuícolas de la Nación ha analizado las objeciones relacionadas con el origen de la orca Kshamenk antes de emitir la Providencia Nº 88/02.

- Planteos relacionados con la permanencia de la orca Kshamenk en un oceanario

La Fundación Tierra Salvaje propone que la orca Kshamenk sea liberada y devuelta a su medio natural, que esta entidad supone localizado en las colonias de esta especie pertenecientes a la Península de Valdés, en la Provincia de Chubut.

Posiblemente ésta sea la más irresponsable y escandalosa de las propuestas, la cual se encuentra analizada en el informe emitido por el Dr. Ricardo Bastida antes mencionado. No existen protocolos científicos en relación con la reintroducción a la naturaleza de los cetáceos que han vivido en cautiverio. Los pocos experimentos que se han realizado ratifican este hecho. Al respecto, resulta ilustrativa la experiencia de la liberación de la orca Keiko (se acompaña en relación con este tema: (i) copia del artículo "*Encierren a Willy*" publicado por el New York Times y reproducido por la revista "VIVA" editada por el Diario Clarín; (ii) copia de la noticia aparecida el día 4 de setiembre de 2002 en el diario La Nación *titulada "Keiko elige el cariño y no la libertad*"; (iii) impresión de la propia página de Internet de la Secretaría de Ambiente y Desarrollo Sustentable que reproduce el artículo publicado por el diario "La Nación").

Esta cuestión también ha sido analizada por la Dirección de Recursos Ictícolas y Acuícolas de la Nación en el informe remitido a la Dirección Nacional de Desarrollo Sustentable, donde se refirió a las objeciones planteadas por la Fundación Tierra Salvaje en relación con el varamiento de la orca Kshamenk.

Al respecto, en la respuesta brindada al NMFS obrante a fs. 412/415 antes mencionada, esta repartición ha expuesto que "*cuando el ejemplar fue llevado al Oceanario para su rehabilitación, no existía ninguna normativa en el país que regulara el mantenimiento en cautiverio de mamíferos marinos en oceanarios. La Resolución actualmente en vigencia fue aprobada el 22 de Diciembre de 1995, momento en que la liberación del animal al medio natural no se consideró factible de resultar exitosa. Tal como se explica en nuestra nota, la posición en ese entonces tomada se basó en el criterio sostenido por la comunidad internacional respecto de la liberación al medio natural de cetáceos mantenidos en cautiverio por largo tiempo. En este sentido, la posición de la Asociación Europea por los Mamíferos Acuáticos establece que existe una ausencia generalizada de evidencias de que los cetáceos sobrevivan una vez liberados y, en consecuencia, cualquier intento de liberación debería ser considerado experimental. Dicha asociación, en consecuencia, no recomienda la*

liberación de cetáceos mantenidos por largo tiempo en cautiverio. También ha sido considerada la posición del NMFS sobre este tema, por el cual se sostiene que la liberación de mamíferos marinos mantenidos en cautiverio por largo tiempo tiene el potencial tanto de dañar a los animales liberados como a los que entren en contacto con éstos en el medio natural. Los aspectos que generan incertidumbre incluyen la habilidad del animal para procurarse su alimento, defenderse de los predadores, la posibilidad de interactuar con personas y buques, transmisión de enfermedades e intercambio genético indeseable entre el animal liberado y las poblaciones de mamíferos marinos del medio natural, así como cualquier patrón de comportamiento desarrollado en cautiverio que pudiera afectar el comportamiento social de los animales salvajes así como la integración social del animal liberado".

La Dirección de Recursos Ictícolas y Acuícolas de la Nación ha reiterado su posición sobre esta cuestión en el informe elevado a la Dirección Nacional de Desarrollo Sustentable también antes referido y obrante a fs. 675/676. En referencia al artículo 19 del Reglamento de Oceanarios, que exige la liberación de los cetáceos incorporados a establecimientos con fines de rehabilitación, la Dirección de Recursos Ictícolas y Acuícolas de la Nación ha manifestado lo siguiente: "*En cuanto refiere la presentante con respecto a la inobservancia por parte del Oceanario precitado, de lo normado por el artículo 19° del Reglamento de Oceanarios, resulta evidente que de las constancias obrantes en el Expediente pertinente surgen los Informes Técnicos que oportunamente aconsejaron la no liberación de la orca Kshamenk; constancias que desvirtúan nuevamente las alegaciones vertidas al respecto por la Fundación Tierra Salvaje*".

Finalmente, la Dirección de Recursos Ictícolas y Acuícolas de la Nación expresó en el informe enviado a la Dirección de Fauna y Flora Silvestres obrante a fs. 698/701 que: "*...el ejemplar ha sido mantenido en cautiverio durante aproximadamente diez años, con motivo de su ingreso al oceanario Mundo Marino S.A. para efectuar su rehabilitación. Tal lapso de tiempo no permite considerar como viable, al presente, su liberación al medio natural y por ende una interacción plena con la población de nuestro litoral marítimo*".

En consecuencia, la Dirección de Recursos Ictícolas y Acuícolas de la Nación también ha analizado las objeciones relacionadas con la ilegitimidad de la permanencia de la orca Kshamenk en el oceanario con anterioridad a la emisión de la Providencia Nº 88/02.

- Objeciones relacionadas con el peligro derivado del traslado de la orca Kshamenk

El Museo Argentino de Ciencias Naturales "Bernardino Rivadavia" -si bien dice carecer de información al respecto- y la Fundación Tierra Salvaje también objetan el programa reproductivo propuesto por Mundo Marino S.A. con invocación -pero sin prueba alguna- de los riesgos que se derivan del transporte de la orca Kshamenk. En este punto cabe hacer notar la

incoherencia de la conducta de la Fundación Tierra Salvaje, ya que por un lado esta organización se escandaliza ante los supuestos peligros derivados del traslado, y por otro anuncia su intención de trasladar al animal a una "jaula marina" en las costas de la Provincia de Chubut (fs. 653/654), iniciativa sin otra finalidad que la explotación turística.

La Dirección de Recursos Ictícolas y Acuícolas ha analizado detenidamente las condiciones y la duración el transporte de la orca Kshamenk desde el establecimiento de Mundo Marino S.A. en San Clemente del Tuyú, Argentina, hasta el establecimiento Six Flags Worlds of Adventure en Aurora, Ohio, Cleveland, Estados Unidos de América. Para llevar a cabo este análisis, la Dirección de Recursos Ictícolas y Acuícolas ha solicitado información a Mundo Marino S.A. y al NMFS, la cual fue presentada junto con un video-cassette que contiene la filmación del transporte de la orca Shouka a modo de ilustración del sistema de transporte a utilizar con la orca Kshamenk.

El análisis aparece desarrollado in extenso en el informe enviado a la Dirección de Fauna y Flora Silvestres obrante a fs. 698/701. En este informe la Dirección de Recursos Ictícolas y Acuícolas describe en detalle la secuencia del traslado y recalca que según el informe producido por el NMFS el transporte se realizará "empleando las técnicas profesionalmente aceptadas y cumpliendo con todas las *regulaciones, estándares y condiciones establecidas en la normativa de ese país vinculada al tema, como ser el Marine Mammal Protection Act (Acta de Protección de Mamíferos Marinos), Acta de Bienestar Animal (Animal Welfare Act) y Acta Lacey*" y que "*se cumplirá con las regulaciones establecidas en el 9° Código de Regulaciones Federales, Sección 3.116 «Cuidado en Tránsito», aplicado por el Servicio de Inspección de Salud Animal y Vegetal (Animal and Plant Health Inspection Service – APHIS)*". Asimismo, el informe de la Dirección de Recursos Ictícolas y Acuícolas señala que el informe del NMFS menciona que "se *utilizarán los contenedores y lineamientos establecidos para el traslado de mamíferos marinos de la especie Orcinus orca en la «Reglamentación para el Transporte de Animales Vivos» publicada por la Asociación del Transpore Aéreo Internacional (IATA)*". Respecto de la duración del traslado, la Dirección de Recursos Ictícolas y Acuícolas señala que de acuerdo con el cronograma presentado por Mundo Marino S.A. se prevé que la misma se extienda a un máximo de 22 horas, siendo el tiempo real de 20 horas al que se le adicionan dos horas de seguridad, lo que tal Dirección encuentra ajustado a lo previsto en el artículo 40 del Reglamento de Oceanarios, el cual dispone que los animales no deben ser mantenidos en lo contenedores de transporte por más de 24 horas, aunque para viajes más largos este período puede ser extendido mediante certificado de médico veterinario que lo autorice.

En consecuencia, la Dirección de Recursos Ictícolas y Acuícolas de la Nación también ha analizado las cuestiones vinculadas con las condiciones y la duración del traslado de la orca Kshamenk con anterioridad a la emisión de la Providencia N° 88/02.

- Objeciones relacionadas con cuestiones jurídicas

El Museo Argentino de Ciencias Naturales "Bernardino Rivadavia" y la Fundación Fauna Argentina han efectuado una serie de consideraciones jurídicas tendientes a sostener que los derechos de Mundo Marino S.A. sobre la orca Kshamenk carecen de legitimidad y que en consecuencia el mismo debe ser liberado y reintroducido en la naturaleza.

Por ejemplo, ambas entidades han citado el Decreto 1216/74, mediante el cual el Poder Ejecutivo Nacional prohibió "la *caza de lobos, elefantes marinos, focas y pingüinos y especies similares de fauna marítima que sean determinados por resolución de la Secretaría de Estado de Recursos Naturales y Ambiente Humano, ya sea con fines deportivos o comerciales hasta completar los estudios biológicos que se está llevando a cabo".* El Museo Argentino de Ciencias Naturales "Bernardino Rivadavia" y la Fundación Fauna Argentina han invocado esta norma para sostener la ilegalidad de la incorporación de la orca Kshamenk en el establecimiento de Mundo Marino S.A. Ante esta alegación, la Dirección de Recursos Ictícolas y Acuícolas solicitó la opinión de la Dirección General de Asuntos Jurídicos del Ministerio de Desarrollo Social de la Nación (fs. 450), que emitió el dictamen Nº 48343 en el cual manifestó que "*el Decreto 1216/74... en modo alguno prohibía la captura de orcas, pues su parte expositiva sólo aludía a lobos marinos, y su parte dispositiva, que prescribió la prohibición de caza, a lobos marinos, elefantes marinos, focas, pingüinos y «especies semejantes». La orca es un cetáceo, y pertenece, por tanto, a otra clase de mamíferos marinos que no puede considerarse semejantes a los enumerados en el decreto de referencia, máxime cuando las prohibiciones, por obligada regla hermenéutica, son de interpretación restrictiva. Además, el decreto aludido sólo transitoriamente estableció la prohibición de que se trata, hasta que fueran completados los estudios biológicos que debía llevar a cabo la Secretaría de Recursos Naturales y Ambiente Humano entonces existente... No es razonable, de otra parte, abusar de una norma transitoria a casi treinta años después de su sanción*" (fs. 535/541).

La Fundación Tierra Salvaje ha invocado la Ley 25.052 que prohíbe la caza o captura a través de redes o del sistema de varamiento forzado, de ejemplares de la especie *Orcinus orca*. Esta cuestión también fue desechada por la Dirección de Recursos Ictícolas y Acuícolas a la consideración de la Dirección General de Asuntos Jurídicos del Ministerio de Desarrollo Social de la Nación, debido a que se trata de una norma que se encuentra vigente a partir de fines de 1998 (dictamen Nº 48343, fs. 538 vta.).

En adición, la Fundación Tierra Salvaje le ha asignado a la orca Kshamenk el carácter de "*recurso natural federal*" (sic) atribuyéndole el carácter de bien del dominio público del Estado Nacional. El Museo Argentino de Ciencias Naturales "Bernardino Rivadavia" también ha expresado que Mundo Marino S.A. posee solamente la tenencia o custodia de la orca Kshamenk y que no debe ser autorizado a exportarla. A pedido de la Dirección de Recursos Ictícolas y Acuícolas, la Dirección General de Asuntos Jurídicos del Ministerio de Desarrollo Social analizó este asunto en

los dictámenes Nº 47618 (fs. 224/227) y Nº 48343 (fs. 538/541). Al respecto, este servicio de asesoramiento jurídico expresó que "*la orca en cuestión... al momento en que fue introducida en el oceanario de Mundo Marino S.A. era, jurídicamente, una res nullius, en los términos del artículo 2343 del Código Civil. Además, para ese entonces, en 1992, no existían reglamentaciones de pesca –o, mejor dicho, de caza o captura- que la hubieran sustraído del tráfico del derecho privado*". La Dirección General de Asuntos Jurídicos continúa diciendo que la Resolución 351/95 "*prohibió la caza, captura o apropiación y tránsito en jurisdicción nacional, de todas las especies de cetáceos y pinnípedos que figuran en el listado de su Anexo I, listado donde se halla también la Orcinus orca*" ... "*Desde la entrada en vigencia de esa Resolución, las orcas quedaron fuera del tráfico del comercio privado, no pudiendo a ser susceptibles de apropiación privada en los términos del artículo 2343 del Código Civil. Pero esa situación jurídica nueva no puede tener efectos retroactivos: es decir, no es aplicable a la orca que pose en su oceanario Mundo Marino, obtenida antes*"... "*por haber ingresado al oceanario antes de... la Resolución... Nº 351 del año 1995, se considera que la orca que permanece en las instalaciones de Mundo Marino S.A. es propiedad privada de ésta. Eso tiene consecuencias relevantes. En primer lugar, no hay obstáculos jurídicos ni para su exportación ni para su venta*".

De lo expuesto surge que, en primer lugar, la Dirección de Recursos Ictícolas y Acuícolas analizó las inquietudes planteadas por el Museo Argentino de Ciencias Naturales "Bernardino Rivadavia" y la Fundación Tierra Salvaje y solicitó la opinión de la Dirección General de Asuntos Jurídicos del Ministerio de Desarrollo Social sobre tales objeciones (fs. 218/219 y 450). En este punto cabe citar especialmente lo dicho por la Dirección de Recursos Ictícolas y Acuícolas en la nota dirigida a la Dirección Nacional de Desarrollo Sustentable solicitándole se dé intervención al servicio jurídico: "*Resulta de particular interés para la evaluación de la solicitud efectuada por el Oceanario Mundo Marino S.A., el Dictamen del Servicio Jurídico de esta Secretaría sobre los presentes actuados, así como sobre los términos contenidos en la presentación... de la Fundación Tierra Salvaje..., en tanto en la misma se debate, entre otros puntos, la naturaleza jurídica de la propiedad del animal así como sobre las potenciales crías, ...la obtención del animal, ...el carácter de la orca como recurso natural federal y el estudio de las cláusulas 2º y 3º del contrato de préstamo presentado por Mundo Marino, obrante a fs. 154/155, en tanto se reseña expresamente el precitado derecho de propiedad*" (fs. 218/219). También conviene recordar que la Dirección de Recursos Ictícolas y Acuícolas, después de recibir la primera respuesta del Museo de Ciencias Naturales "Bernardino Rivadavia", envió una carta a sus autoridades (obrante a fs. 213) diciéndoles que sus inquietudes habían sido incorporadas en el expediente y que serían trasladadas al servicio jurídico pertinente.

En segundo lugar, puede comprobarse que la Dirección de Recursos Ictícolas y Acuícolas estudió el contenido de los dictámenes jurídicos, tal como por ejemplo lo revela lo manifestado por esta repartición en el memorandum dirigido a la Dirección Nacional de Desarrollo Sustentable:

"cabe referenciar que el Dictamen N° 47618 del servicio permanente de asesoramiento jurídico, deja expresamente establecido que no existe óbice alguno para que la autoridad de aplicación del Reglamento de Oceanarios autorice la exportación solicitada" (fs. 675/676).

Finalmente, puede suponerse que la Dirección de Recursos Ictícolas y Acuícolas ha realizado un atento análisis del informe emitido por el Museo Argentino de Ciencias Naturales "Bernardino Rivadavia". La Dirección de Recursos Ictícolas y Acuícolas pidió el asesoramiento del Museo Argentino de Ciencias Naturales "Bernardino Rivadavia" acerca de la solicitud efectuada por Mundo Marino S.A. (fs. 129). El Museo Argentino de Ciencias Naturales "Bernardino Rivadavia", a fs 135, adujo que *"...desearía, antes de omitir opinión, conocer los aspectos económicos del acuerdo..."*. La Dirección de Recursos Ictícolas y Acuícolas, a fs 213, responde que *".... hemos remitido a usted toda la documentación presentada por el Oceanario ..., agradecería nos remitiera su opinión sobre aquellos aspectos biológicos y de conservación que estime correspondan"*. De cualquier manera, junto con esta respuesta, la Dirección de Recursos Ictícolas y Acuícolas acompañó la presentación efectuada por la Fundación Tierra Salvaje que solicitaba se consulte obre diversos tópicos al Museo Argentino de Ciencias Naturales "Bernardino Rivadavia".

Con lo anterior queda claro que, antes de emitir la Providencia N° 88/02, la Dirección de Recursos Ictícolas y Acuícolas también ha analizado las objeciones de carácter jurídico realizadas por el Museo Argentino de Ciencias Naturales "Bernardino Rivadavia" y por la Fundación Tierra Salvaje.

III.a.3. Conclusiones

La resolución recurrida manifiesta que la Providencia N° 88/02 *"constituye, en la opinión del suscripto, un acto nulo, en los términos del artículo 14 de la Ley N° 19.549, pues carece de motivación suficiente y la decisión en ella adoptada es contraria a los óbices de entidad formulados, contra el convenio reproductivo de Mundo Marino S.A., por las prestigiosas entidades con pericia en la materia que fueron especialmente consultadas para asesorar a la Secretaría de Ambiente y Desarrollo Sustentable respecto de la decisión por adoptar"*.

Del análisis de las opiniones de las entidades con pericia en la materia (reseñadas en el punto III.a.1) surge que la Providencia N° 88/02 sólo es contraria al dictamen producido por el Museo Argentino de Ciencias Naturales "Bernardino Rivadavia".

Por ende, la resolución recurrida, cuando afirma que la decisión adoptada en la Providencia N° 88/02 es contraria a las objeciones contra el programa reproductivo formuladas por las prestigiosas entidades consultadas, carece de sustento fáctico.

La resolución recurrida continúa diciendo que la Providencia Nº 88/02 "*omitió rebatir con argumentos razonables esas objeciones, lo mismo que las planteadas por las asociaciones ecologistas admitidas como partes en el expediente, y se limitó a exponer, de manera dogmática y, por tanto, con irrazonabilidad manifiesta, que «esta Dirección considera que existe mérito suficiente para aprobar el Convenio de Reproducción»*".

En el punto III.a.2 de este escrito se citaron las pruebas de la atención prestada por la Dirección de Recursos Ictícolas y Acuícolas a las objeciones planteadas por el Museo Argentino de Ciencias Naturales "Bernardino Rivadavia" y por la Fundación Tierra Salvaje. En efecto, la Dirección de Recursos Ictícolas y Acuícolas consideró tales objeciones, estudiando su verosimilitud cuando se trataba de planteos técnicos y solicitando el análisis jurídico en el caso de los cuestionamientos legales. Asimismo, debe notarse que la Dirección de Recursos Ictícolas y Acuícolas mantuvo sucesivos intercambios de correspondencia con los organismos gubernamentales de los Estados Unidos de América con competencia en materia de manejo y cuidado de los mamíferos marinos (NMFS y APHIS que es –esta última- la agencia estadounidense responsable del cuidado del animal incluyendo el transporte) para informarse sobre la habilitación y el funcionamiento de la entidad receptora, los antecedentes de dicha empresa, las características técnicas de la infraestructura, los soportes de vida de las instalaciones, el amparo que las regulaciones estadounidenses le darían a la orca Kshamenk, etcétera, todos hechos que también contribuyen a probar la diligencia de la mencionada Dirección.

Por lo tanto, la resolución recurrida, cuando afirma que la Providencia Nº 88/02 omitió rebatir con argumentos razonables las objeciones de las entidades con pericia en la materia y las de las asociaciones ambientalistas tenidas como parte en el expediente, no se ajusta a la verdad de los hechos. Si bien la Providencia Nº 88/02 no contiene una réplica de tales objeciones en su texto, lo cierto es que la Dirección de Recursos Ictícolas y Acuícolas las refutó anteriormente, tal como consta en el expediente.

Además, cabe mencionar que con anterioridad a la avocación del Sr. Secretario de Ambiente y Desarrollo Sustentable en el trámite del expediente, la Fundación Tierra Salvaje interpuso un recurso administrativo contra la Providencia Nº 88/02. Este recurso fue objeto de dictamen por parte del asesor letrado de la Dirección de Fauna Silvestre (fs. 856/859) y por parte de la Dirección General de Asuntos Jurídicos (fs. 941/942), sin que tales dictámenes observaran vicio alguno en la Providencia Nº 88/02. Huelga decir que si la irrazonabilidad de la Providencia Nº 88/02 fuera tal y estuviera tan manifiesta, estos dictámenes (o, en su caso, los funcionarios que tomaron intervención en el expediente con posterioridad) deberían haber formulado alguna objeción a su respecto.

La resolución recurrida, cuando manifiesta que la Providencia Nº 88/02 es un acto carente de motivación suficiente y califica su decisión como dogmática e irrazonable, tampoco se ajusta al derecho aplicable.

La Ley de Procedimientos Administrativos señala como uno de los elementos del acto administrativo la motivación (artículo 7, inciso e), estableciendo de esta manera la obligación genérica de fundar los actos administrativos. La motivación es la expresión de las razones y las circunstancias de hecho y derecho que han llevado a dictar el acto. En principio la motivación es concomitante al acto y surge de sus "considerandos", pero esto no tiene un valor normativo.

En efecto, se admite la motivación previa, si ella surge de informes y dictámenes expresamente invocados en el acto (CNFedContAdm, Sala II, 23/09/93, causa "Beamurguia", ED 156-113). Esto es aplicable al caso en análisis, toda vez que la Providencia Nº 88/02 cita los dictámenes jurídicos (favorables a la ejecución del convenio) y los dictámenes técnicos (favorables a la ejecución del convenio, con excepción del dictamen del Museo Argentino de Ciencias Naturales Bernardino Rivadavia).

Asimismo, la Procuración del Tesoro de la Nación tiene sentado que la motivación insuficiente permite acudir, para interpretar el acto, a las actuaciones anteriores, ya que deben considerarse en su totalidad y no aisladamente porque son parte integrantes de un procedimiento y, como etapas del mismo, son independientes y conexas entre sí (PTN, Dictamen 256/1991). En el mismo sentido que el dictamen citado, la jurisprudencia ha dicho que: "*la falta de una expresa motivación, por sí sola, no basta para invalidar los actos cuestionados, siempre que de los antecedentes e informes que se hubieran evaluado para dictarlos surgiera la existencia del motivo o causa que lo justificó*" (CNFedContAdm, Sala IV, 28/02/95, causa "Meererfeld"). La doctrina que emana de estos antecedentes permite integrar la motivación de la Providencia Nº 88/02 con todas las piezas procesales emitidas por la Dirección de Recursos Ictícolas y Acuícolas con anterioridad (pedidos de informes, solicitudes de intervención del servicio de asesoramiento jurídico, informes elevados a la Dirección Nacional de Desarrollo Sustentable y dictamen dirigido a la Dirección de Fauna y Flora Silvestres).

Luego de salvado el vicio referido a la motivación, también queda descartada la calificación de "dogmática" e "irrazonable" que la resolución recurrida hace de la Providencia Nº 88/02. Ejemplos de irrazonabilidad son la contradicción, la desproporcionalidad y la absurdidad (Gordillo, A.: "Tratado de derecho administrativo", 3ª Ed., Bs.As., Macchi, 1982, T. III). Por el contrario, el estudio del desenvolvimiento de la conducta seguida por la Dirección de Recursos Acuícolas e Ictícolas a lo largo del trámite del expediente permite concluir que la Providencia Nº 88/02 constituye una derivación razonada de los antecedentes de hecho y de derecho aplicables al caso.

En conclusión, la resolución recurrida no se ajusta a los hechos (en cuanto es inexacto que la Providencia Nº 88/02 sea contraria a los dictámenes emitidos por las entidades con pericia en la materia y que no hayan sido consideradas en su dictado las objeciones planteadas por tales entidades y por las organizaciones tenidas como parte en el expediente), y tampoco se

ajusta al derecho aplicable (toda vez que califica de acto carente de motivación suficiente, de dogmática y de irrazonable a una decisión que no lo es).

Por ende, la revocación de la Providencia Nº 88/02 por la resolución recurrida debe ser dejada sin efecto, en cuanto se trata de un acto viciado en la causa por no sustentarse en los hechos ni en el derecho aplicable (artículo 7 inciso "b" y artículos 14 y 17 de la Ley de Procedimientos Administrativos).

Para el hipotético caso de que la Sra. Ministro entienda que las constancias obrantes en el expediente no son suficientes para integrar la motivación de la Providencia Nº 88/02, mi representada solicita como prueba de su parte se solicite al firmante de dicha providencia, Lic. Oscar H. Padín, ex director de la entonces Dirección de Recursos Ictícolas y Acuícolas, que desarrolle los motivos que lo llevaron a afirmar que existe mérito para aprobar el programa de reproducción propuesto para la orca Kshamenk por Mundo Marino S.A.

III.b. Denegación de las autorizaciones necesarias para llevar a cabo el programa reproductivo

En adición a revocar la aprobación del programa de reproducción, la resolución recurrida resuelve denegar las demás autorizaciones para dar cumplimiento al programa reproductivo propuesto para la orca Kshamenk.

Una de las autorizaciones necesarias para dar cumplimiento al programa reproductivo es la del permiso de exportación CITES exigido por el artículo 4 de la Ley 22.344 y el artículo 14 de su Decreto Reglamentario (Decreto 522/97). Este permiso se otorga una vez satisfechos los siguientes requisitos: (i) que una autoridad científica del Estado de exportación haya manifestado que la exportación no perjudicará la supervivencia de esa especie; (ii) que una autoridad administrativa del Estado de exportación haya verificado que el animal no fue obtenido en contravención de la legislación vigente en dicho Estado sobre la protección de su fauna y flora; y (iii) que una autoridad administrativa del Estado de exportación haya verificado que el animal vivo será acondicionado y transportado de manera que se reduzca al mínimo el riesgo de heridas, deterioro en su salud o maltrato.

Otra de las autorizaciones necesarias es la autorización de egreso del oceanario por exportación, exigida por el artículo 17 del Reglamento de Oceanarios, el cual se concede bajo los siguientes requisitos: (i) el oceanario debe estar previamente habilitado por la autoridad de aplicación del Reglamento de Oceanario; (ii) debe presentarse la documentación CITES y la documentación aduanera; y (iii) debe presentarse la ficha técnica individual del animal.

Si bien Mundo Marino S.A. cumple con todos los requisitos para obtener el permiso de exportación CITES y la autorización de egreso de la orca Kshamenk del oceanario, la resolución recurrida ha resuelto denegar estas autorizaciones con invocación de una serie de argumentos que se enumeraron anteriormente y que a continuación se analizan en forma separada.

III.b.1. Riesgos derivados del transporte de la orca Kshamenk

Para denegar las restantes autorizaciones necesarias, la resolución recurrida señala en primer lugar que la aprobación del programa de reproducción implicaría una medida contraria al fin primordial de protección de los mamíferos marinos perseguido por el Reglamento de Oceanarios, en cuanto el traslado de la orca Kshamenk al lugar de destino comporta riesgos elevados para su vida.

Tal como se explicó anteriormente, la Dirección de Recursos Ictícolas y Acuícolas solicitó a Mundo Marino S.A. y a las autoridades estadounidenses competentes información relacionada con las condiciones en que se realizaría el traslado de la orca Kshamenk. Tales condiciones fueron analizadas *in extenso* por la citada Dirección en el dictamen enviado a la Dirección de Fauna y Flora Silvestres que obra a fs. 698/701, análisis que termina por concluir que los recaudos y la duración satisfacen los requisitos exigidos por la normativa aplicable.

Sin embargo, la resolución recurrida, sin antes realizar análisis alguno de carácter técnico que dé fundamentos a esta afirmación, manifiesta que la emisión de las autorizaciones necesarias para llevar a cabo el programa reproductivo atentaría contra la salud de la orca Kshamenk.

Debe observarse que del expediente no surge ningún estudio técnico hábil para dar sustento a esta afirmación.

En efecto, lo resuelto en este punto por la resolución recurrida reproduce textualmente lo expuesto en el proyecto de resolución emitido por un consultor legal de la Secretaría de Ambiente y Desarrollo Sustentable que obra a fs. 963/977. Sin embargo, la Dirección General de Asuntos Jurídicos del Ministerio de Desarrollo Social, sobre este punto ha dicho en su Dictamen Nº 47618 (224/227) que "*...el riesgo inherente al transporte de mamíferos marinos no es un obstáculo para la realización del mismo, siempre que se cumplan los recaudos de preservación y seguridad previstos en la reglamentación (v. arts. 38 a 40 del Reglamento de Oceanarios). Demás está decir que al servicio permanente de asesoramiento jurídico no le corresponde la auditoría técnica de esos requisitos*". Luego, en su Dictamen Nº 53914 emitido en oportunidad de evaluar el proyecto de resolución emitido por el consultor legal al que ya se hizo referencia en cumplimiento de lo dispuesto en el artículo 7 inciso d) de la Ley de Procedimientos Administrativos, la Dirección General de Asuntos Jurídicos ha reiterado que las consideraciones de carácter técnico son ajenas a la competencia del servicio jurídico y ha citado distintos dictámenes de la

Procuración del Tesoro de la Nación en apoyo de esta observación (Dictamen Nº 53914, capítulo II, fs. 980/981). Cabe concluir entonces que el proyecto de resolución de fs. 963/977 no constituye una motivación válida con respecto a este tema.

El único antecedente de carácter técnico negativo sobre este punto es, una vez más, el informe producido por el Museo Argentino de Ciencias Naturales "Bernardino Rivadavia". Dicho informe contiene un brevísimo análisis (apartado "H") relacionado con el riesgo que para el animal se deriva del transporte. Este hecho tampoco puede ser considerado como motivación hábil al respecto, toda vez que la propia entidad emisora manifiesta que "es *imposible responder con precisión en este punto, ya que falta información referida a este punto y el propio National Marine Fisheries Services en su escrito a la empresa Six Flags solicita mayor detalle sobre los métodos de transporte*" (fs. 421). En consecuencia, el informe producido por el Museo Argentino de Ciencias Naturales "Bernardino Rivadavia" tampoco puede ser considerado un antecedente susceptible de conferir motivación suficiente de la resolución recurrida en este aspecto.

Mi representada considera que el análisis efectuado por la Dirección de Recursos Ictícolas y Acuícolas sobre las condiciones del traslado en el dictamen obrante a fs. 698/701 es acertado y suficiente para refutar lo expuesto en la resolución recurrida respecto del transporte del animal. En relación con este tema, cabe recordar que la opinión de la Dirección de Recursos Ictícolas y Acuícolas merece especial consideración, en atención a que se trata de un dictamen técnico emanado de la autoridad de aplicación del Reglamento de Oceanarios con experiencia comprobable en el manejo de cetáceos.

De cualquier manera y a fin de desvirtuar cualquier supuesto riesgo que para la salud del animal se deriva del traslado, en adición a la información existente a fs. 53/76 y 924, mi representada acompaña como prueba de su parte el informe producido por el Dr. Jim Antrim, quien supervisa el equipo que tendrá a cargo el viaje de la orca Kshamenk desde Argentina a los Estados Unidos de América.

El Dr. Jim Antrim constituye el especialista con más experiencia a nivel mundial en materia de transporte de cetáceos. Ha publicado numerosos artículos en revistas científicos, es coautor del libro "*Marine Mammal Transport*" (Ed. 2002, publicado junto con el Dr. Mc Bain), es miembro de la Society for Marine Mammals, fue Secretario y Tesorero de la International Association of Aquatic Animal Medicine, Director de Animal Transportation Association y Presidente de Alliance of Marine Mammal Parks and Aquariums.

El Dr. Jim Antrim ha efectuado alrededor de cien traslados exitosos de orcas, incluyendo la supervisión del reciente traslado de la otra orca involucrada en el programa reproductivo propuesto por Mundo Marino S.A. (la orca hembra Shouka, que fue trasladada en mayo de 2002 desde Francia

a los Estados Unidos de América), que se realizó sin inconveniente alguno tal como se encuentra documentado en una filmación que oportunamente mi representada presentó en video a la Secretaría de Ambiente y Desarrollo Sustentable.

En el informe que se acompaña, el Dr. Jim Antrim declara que en los numerosos traslados en los que tuvo intervención "*no hubo muertes, traumatismos significativos o enfermedades en ninguno de estos animales relacionados con su transporte*".

Por ende, se concluye que la resolución recurrida, en cuanto resuelve denegar las autorizaciones con invocación del peligro derivado del traslado, carece de motivación y de causa (artículo 7, incisos "b" y "e" de la Ley de Procedimientos Administrativos) y debe ser revocado por la Sra. Ministro (artículos 14 y 17 del mismo ordenamiento legal).

III.b.2. Calificación del programa de reproducción como medida súbita, aislada y sin antecedentes coherentes

Otra de las razones en las cuales la resolución recurrida invoca para denegar las autorizaciones necesarias, es la afirmación de que "*el convenio reproductivo propuesto no representa una etapa desarrollada de un programa orgánico de reproducción llevado a cabo por la institución interesada, sino que su estipulación parece ser una medida aislada y súbita, carente de antecedentes coherentes en los que pudiera contextualizarse*".

Esta afirmación es poco clara, pero sin duda revela que para llegar a esta conclusión la resolución recurrida ha debido ignorar por completo todo lo actuado por Mundo Marino S.A. en el presente expediente, especialmente el contenido del punto 1- *Antecedentes del Proyecto* de la presentación que dio origen a las presentes actuaciones (obrante a fs. 3), que se reproduce a continuación:

"Como toda institución Zoológica moderna e involucrada con la investigación y la conservación de las especies, Mundo Marino tiene como objetivo lograr grupos auto-sustentables de las especies que alberga. Siendo este un objetivo básico que se cimienta en los programas de Reproducción e Investigación, permite la viabilidad de la continuación de las instituciones y de sus planes de investigación y conservación a través de los años.

La pareja de orcas alojada en Mundo Marino, compuesta por Kshamenk y Belén, formó parte durante varios años de los programas de reproducción e investigación que se han estado desarrollando con las distintas especies animales que alberga el oceanario.

A través de los años, dichos programas han demostrado ser exitosos con lobos marinos, diversas aves, pingüinos y delfines, a tal punto que a modo de ejemplo se puede citar que este año se ha producido el sexto nacimiento de delfín y otra de las hembras se encuentra preñada.

El éxito alcanzó incluso a la pareja de orcas, dado que al llegar a la madurez reproductiva la hembra gestó un feto que se desarrolló

normalmente pero murió antes del alumbramiento, suceso no anormal en las hembras primerizas.
La preñez de la hembra demostró la fertilidad de la pareja y la casi certeza de lograr en el futuro un grupo social de orcas. Un hecho muy importante para el desarrollo de los individuos de esta especie, que son altamente sociables.
La lamentable e inesperada muerte de la hembra Belén, que ocurrió algunos meses después tuvo tres importantes consecuencias:

1) *Quedó truncada definitivamente la posibilidad de continuar con el Programa de Reproducción planificado.*
2) *El macho pierde a su compañera de especie a la cual estaba perfectamente adaptado*
3) *La institución debe replantear su estrategia para obtener un grupo auto-sustentable de esta especie"*

El convenio reproductivo suscripto en relación con la orca Kshamenk es una medida adoptada para dar continuidad a un programa reproductivo anterior que quedó frustrado en el pasado. Los antecedentes de dicho programa reproductivo obran en poder de la Dirección de Recursos Ictícolas y Acuícolas de la Nación, como así también la información concerniente al importante proyecto de ampliación de infraestructura y de los soportes de vida. En efecto, en 1997 se realizó un proyecto de adecuación de las instalaciones que respondiera a las necesidades del programa reproductivo que se estaba llevando a cabo y que pudiera sustentar a una familia de orcas. El proyecto constaba de dos etapas: un importante complejo para orcas que demandaría tres años de construcción y una pileta intermedia que pudiera albergar a la hembra y su primer cría. Las dos instalaciones se comenzaron a construir al mismo tiempo, obras que pudieron ser observadas por los inspectores que periódicamente nos controlan. La instalación intermedia se concretó en un año y fue habilitada por las autoridades competentes. Lamentablemente al ocurrir la muerte de la hembra, la construcción del complejo mayor debió ser detenida.

Ante esta situación, Mundo Marino S.A. efectuó un análisis exhaustivo de las alternativas disponibles a fin de solucionar el grave problema de la soledad de la orca y de la auto-sustentabilidad de la especie, llegando a la conclusión que la única alternativa posible era ingresarlo en préstamo a un programa de reproducción internacional, en consideración de que desde la muerte de la hembra se ha visto drásticamente disminuida la calidad de vida del ejemplar, y que por su bienestar no se debía prolongar por más tiempo su calidad de animal solitario, pues podía tener importantes consecuencias sobre su salud y expectativa de vida. Como se sabe, es obligación de Mundo Marino S.A. asegurar la calidad de vida y el bienestar de la orca Kshamenk y además lograr que los animales que albergue de esta especie provengan de sus propios procesos auto-sustentables.

Finalmente, Mundo Marino S.A. logró concertar con Six Flags Theme Parks Inc., -una institución de prestigio empresarial y científico, con tecnología y conocimientos especializados en el cuidado de cetáceos- un convenio para integrarlo a un programa reproductivo que llevará a cabo dicha institución

estadounidense y que involucra el préstamo de la orca Kshamenk y un ejemplar hembra de *Orcinus orca* identificada como Shouka proveniente del establecimiento "Marineland", propiedad de Marineland S.A., sito en Antibes, Francia.

Se han tomado múltiples acciones tendientes a poner en marcha este programa de reproducción. Las autoridades competentes en Francia autorizaron a Marineland S.A. a trasladar la orca Shouka desde Francia a los Estados Unidos de América con fines reproductivos. Asimismo, Six Flags Theme Parks Inc. obtuvo la autorización para ingresarla ante las autoridades competentes en los Estados Unidos de América. La orca Shouka arribó al establecimiento de la institución receptora en mayo de 2002, y desde entonces se encuentra a la espera de la orca Kshamenk para dar comienzo al programa reproductivo (sola, sin otro ejemplar de su especie).

Con respecto a la orca Kshamenk, en mayo de 2002 Six Flags Theme Parks Inc. obtuvo ante los Estados Unidos de América la autorización para su ingreso y permanencia temporaria en ese país. En efecto, el organismo competente en ese país, el NMFS, expidió la autorización N° 1001-1656-00 que habilita a Six Flags Theme Parks Inc. a ingresar, albergar y exhibir públicamente a la orca Kshamenk, con motivo del programa de reproducción en cuestión. Por su parte, en febrero de 2003 Mundo Marino S.A. obtuvo ante las autoridades competentes de la Provincia de Buenos Aires la guía de tránsito necesaria para la transferencia, egreso y transporte de la orca Kshamenk desde San Clemente del Tuyú hasta el Aeropuerto Internacional de Ezeiza. Ahora resta obtener de las autoridades nacionales las demás autorizaciones necesarias para trasladar a EE.UU. la orca Kshamenk.

Por lo demás, a fs. 524/534 de las presentes actuaciones obra agregada información específica que explica el desarrollo y las condiciones en las que se llevará a cabo el programa reproductivo. También obra agregado a fs. 218/219 y 698/701 el análisis que la Dirección de Recursos Ictícolas y Acuícolas de la Nación ha efectuado acerca de Six Flags Theme Parks Inc., que sería la institución receptora de la orca Kshamenk y que tendría a su cargo la ejecución del programa reproductivo.

En conclusión: (i) la existencia de un programa de reproducción anterior que involucraba a la orca Kshamenk y que se desarrolló bajo supervisión de la Dirección de Recursos Ictícolas y Acuícolas de la Nación; (ii) la realización de un proyecto de infraestructura adecuado al programa de reproducción de esta especie, concretado en una de sus etapas (iii) la concertación de un convenio con Six Flags Theme Parks Inc. para integrar a la orca Kshamenk a un programa reproductivo; (iv) el hecho ya ocurrido de la exportación de la orca Shouka desde Francia a los Estados Unidos de América para integrarla al mismo programa; (v) las autorizaciones ya expedidas en relación con la orca Kshamenk (guía de tránsito de la Provincia de Buenos Aires y la autorización expedida por las autoridades competentes de los Estados Unidos de América); (vi) el material aportado por Mundo Marino S.A. en relación con el desarrollo del programa reproductivo; y (vii) el

análisis de las condiciones de la institución receptora realizada oportunamente por la Dirección de Recursos Ictícolas y Acuícolas de la Nación, confieren un contexto de seriedad suficiente a la propuesta de Mundo Marino S.A. y evidencian la existencia de un programa orgánico de reproducción, con lo que queda refutada la calificación casi vejatoria que hizo la resolución recurrida al decir que el convenio reproductivo "*parece ser una medida aislada y súbita, carente de antecedentes en los que pudiera contextualizarse*". La Sra. Ministro comprenderá que, en el caso de que el convenio reproductivo tuviera las características atribuidas por la resolución recurrida, se estaría subestimando el entendimiento de las autoridades competentes en los Estados Unidos de América y en la Provincia de Buenos Aires.

Resta decir que lo resuelto en este punto por la resolución recurrida también carece de otra motivación que lo expuesto en el proyecto de resolución emitido por el consultor legal de la Secretaría de Ambiente y Desarrollo Sustentable que obra a fs. 963/977 y que ya fue mencionado. Por lo tanto, a este extremo también se le aplican las consideraciones efectuadas por la Dirección General de Asuntos Jurídicos del Ministerio de Desarrollo Social, relativas a que las consideraciones de carácter técnico son ajenas a la competencia del servicio jurídico (Dictamen Nº 53914, capítulo II, fs. 980/981).

Por ende, se concluye que la resolución recurrida, en cuanto resuelve denegar las autorizaciones alegando el argumento recién analizado, carece de motivación y de causa (artículo 7, incisos "b" y "e" de la Ley de Procedimientos Administrativos), lo cual amerita su revocación (artículos 14 y 17 del mismo ordenamiento legal).

III.b.3. Posibilidad de utilizar técnicas de reproducción artificial

Entre los argumentos invocados por la resolución recurrida para denegar las autorizaciones necesarias para levar a cabo el programa reproductivo, se encuentra el vinculado con la posibilidad de utilizar técnicas de reproducción artificial. En este sentido, la resolución recurrida invoca "*la existencia de procedimientos probados y seguros que evitan la necesidad de traslado de los animales para lograr con éxito la fecundación de la hembra, como la reproducción asistida a partir de semen extraído por electroeyaculación y el traslado del mismo en muestras de nitrógeno líquido*".

Nuevamente, este argumento reproduce lo expuesto en el proyecto de resolución emitido por el consultor legal de la Secretaría de Ambiente y Desarrollo Sustentable que obra a fs. 963/977, de manera que mi representada hace extensivas las consideraciones efectuadas en relación con que no corresponde a los asesores jurídicos la evaluación de aspectos técnicos.

También de nuevo, el proyecto del consultor legal recoge la opinión del Museo Argentino de Ciencias Naturales "Bernardino Rivadavia", que en el

apartado "J" de su informe manifiesta "*...estimamos que existen métodos de reproducción asistida que hubieran permitido la extracción de semen de Kshamenk en San Clemente del Tuyú por electroeyaculación y el traslado de las muestras en Nitrógeno Líquido por avión a los Estados Unidos, donde dicho semen se hubiera podido usar para fecundar en forma artificial a las hembras de orcas disponibles*" (fs. 422).

Mi representada no duda que puedan explorarse técnicas de reproducción artificial, lo que de hecho está previsto que se realice durante la estadía de la orca Kshamenk en los Estados Unidos de América. Sin embargo, uno de los objetivos primordiales del programa reproductivo de Mundo Marino S.A. es la mejora de la calidad de vida de la orca Kshamenk a través de la compañía de otro ejemplar de su misma especie, evitando que su situación de soledad se prolongue por el resto de su vida.

De cualquier manera, mi representada considera necesario aclarar que no existe todavía una técnica estandarizada en materia de reproducción artificial de cetáceos. Esto se encuentra claramente explicado en el informe producido por el Dr. Bastida, y se encuentra implícito en el dictamen del Centro Nacional Patagónico en tanto allí se expresa que la reproducción asistida "*debería ser explorada*".

Cabe destacar que el hecho de que en los Estados Unidos de América se estén desarrollando incipientes experiencias en la materia, no quiere decir que en nuestro país pueda encararse a corto o mediano plazo un programa de colección de semen y/o inseminación artificial de cetáceos. No hace falta recordar que tanto el sector público como el sector privado se encuentran atravesando una severa crisis económico-financiera. Ante una situación generalizada de escasez de alimentos y medicamentos, resultaría absurdo y reñido con la ética destinar ingentes fondos a un programa semejante.

Mi representada también cree conveniente aclarar que debe descartarse por completo la técnica de inseminación a partir de semen extraído por electroeyaculación y el traslado del mismo en muestras de nitrógeno líquido aludida por la resolución recurrida, dado que es un método especialmente cruento, inaplicable en esta especie y que nunca ha sido utilizado en orcas.

Para realizar la electroeyaculación se utiliza un artefacto específico (electroeyaculador) que consiste en un tubo rígido, en el cual en un extremo están ubicados los electrodos y en el otro una conexión a través de cables a una fuente de energía eléctrica (semejante a una picana eléctrica). Por ejemplo, en el electroeyaculador que se utiliza para el caso de un toro -cuyo tamaño físico es 4 ó 5 veces inferior al de una orca adulta- el tubo conductor tiene aproximadamente 75 cm. de largo y 4 cm. de diámetro. Este artefacto debe ser introducido por vía rectal hasta la zona de inicio de los cuerpos cavernosos, donde se encuentran localizadas la próstata y las glándulas vesiculares, y debe ser apoyado en los centros sensitivos de eyaculación para luego realizar una descarga de energía eléctrica que provoca las reacciones físicas necesarias para la eyaculación.

En el caso de las orcas, no existen dispositivos anatómicamente eficaces a raíz de la distinta posición y tamaño de los órganos internos, y además no se conoce el rango de los parámetros a utilizar (nivel de la corriente de excitación, frecuencia, tiempo de estimulación, etcétera), todo lo cual puede provocar errores graves como el llenado del cuerpo cavernoso antes que la extensión de la flexura, la no relajación de los músculos retractores, la mezcla incompleta de los fluidos glandulares, etcétera. Además, las alternativas existentes para aplicar el método de la electroeyaculación sobre una orca consisten en: (i) dormir al animal a través de una anestesia general, lo cual es ampliamente conocido por los especialistas en cetáceos como una maniobra médica no recomendable, atento que no existe una técnica segura y viable que evite la producción de un paro respiratorio y la consecuente muerte del animal; o (ii) inmovilizar al animal fuertemente para evitar que, ante el dolor, el mismo se mueva violentamente con el artefacto todavía introducido en su cuerpo, lo que podría provocarle serias lesiones internas. La segunda alternativa es de muy difícil implementación, ya que resulta prácticamente imposible lograr la inmovilización dentro de la pileta y la utilización de energía eléctrica en el agua representa un riesgo importante. Por ende, sería necesario retirar a la orca de la pileta y llevarlo a piso firme, para lo cual se necesitaría trabajar con una grúa de grandes dimensiones. Luego, la tarea consistiría en ubicar el animal de forma tal que la zona ventral quede al descubierto, para poder exteriorizar el pene y colocarlo en un tubo estéril. La tarea más difícil sería sin duda la de encontrar y utilizar algún método de sujeción prensil para sujetar a un animal de aproximadamente 3.500 kg. y 7 mts. de largo sin causarle heridas cuando el animal intente movilizarse en el momento de introducción del vástago y cuando reciba la descarga del electroeyaculador.

De la descripción anteriormente efectuada se colige que la electroeyaculación representa un método extremadamente invasivo. Quienes, como mi representada, tienen experiencia práctica en el manejo de cetáceos y en particular de la orca Kshamenk, saben que la electroeyaculación es un método inviable y reñido con el bienestar del animal. En efecto, Mundo Marino S.A. jamás podría en la práctica implementar esta técnica con la orca Kshamenk, que está acostumbrada a prestarse dócilmente a todos los pedidos de los seres humanos que lo rodean porque "sabe" que ellos no le causan daño y dolor. Resulta inimaginable el stress que una técnica tan agresiva como la electroeyaculación podría causar sobre el animal.

Lamentablemente, el proyecto además prescinde de la opinión del Centro Nacional Patagónico del CONICET, que en su punto 4 expresa lo siguiente respecto a la inseminación artificial en general: "*El desarrollo de esta alternativa beneficiaría la reproducción de la orca en la situación actual, no resolvería así la situación de soledad*" (fs. 231/232).

En conclusión, la resolución recurrida, en cuanto resuelve denegar las autorizaciones argumentando la posibilidad de utilizar técnicas tales como laelectroeyaculación a las que caracteriza "*procedimientos probados y seguros*" que evitan el traslado del animal, exhibe un vicio en la motivación

(debido a que omite considerar que la implementación de dichas técnicas no resuelven la situación de soledad de la orca Kshamenk) y en la causa (puesto que sugiere un método de imposible implementación al caso concreto de la orca Kshamenk). Estos vicios también ameritan la revocación de la resolución recurrida por la Sra. Ministro, en los términos del artículo 7, incisos "b" y "e" de la Ley de Procedimientos Administrativos.

III.b.4. Aprovechamiento racional del ejemplar

La resolución recurrida manifiesta que la aprobación del programa de reproducción sería una medida contraria a la racionalidad en el aprovechamiento del ejemplar, que debe beneficiar esencialmente a la comunidad argentina mediante su inserción en adecuados programas de educación e investigación ambiental y ecológica, llevados a cabo en el marco del Reglamento de Oceanarios.

Mi representada no comparte la idea de que la permanencia de la orca Kshamenk en la Argentina constituya un aprovechamiento racional del ejemplar; la permanencia de la orca Kshamenk en Argentina importaría resignar al animal a vivir en soledad por el resto de su vida. Mi representada considera que el aprovechamiento racional debe en todo caso encontrarse ligado a la mejora en la calidad de vida y bienestar del animal, y cree en verdad que la concreción del programa reproductivo propuesto contribuirá a lograr tal mejora.

En el caso particular este programa de reproducción además aportaría un beneficio científico y educativo adicional. El convenio contempla una acción integrada y conjunta de científicos argentinos y extranjeros en la ejecución de un programa internacional de reproducción natural y asistida. Significa un importante intercambio tecnológico y científico que sin duda es de interés para la Nación, ya que no beneficia sólo al oceanario, sino a todos los que aprovechen ese intercambio y la transferencia de tecnología y de conocimiento que se realiza a la comunidad a través de los profesionales, técnicos y estudiantes de los cursos de nivel terciario y especialización profesional que anualmente dicta Mundo Marino S.A. y de las horas cátedras para la Facultad de Veterinaria de la Universidad Nacional de La Plata y de la Universidad del Salvador. Permitiría a Mundo Marino acceder a realizar investigaciones en el campo de la reproducción asistida, que de otra forma le resultarían inaccesibles. Por lo tanto queda claro que la comunidad argentina recibirá beneficios en educación e investigación aún cuando el animal no esté físicamente en el país. Incluso se puede decir que esta contribución será más importante y específica que la que produciría si se quedara en el país. Demás está decir que con la procreación de descendientes de su especie, Kshamenk contribuirá a perpetuar esta especie para el aprovechamiento y beneficio de la comunidad Argentina a través del tiempo, dado que de otra forma cuando acaezca la muerte de Kshamenk, se verá privada del beneficio de contar con esta especie para su educación e investigación.

En este sentido, debe considerarse que la ejecución del programa reproductivo resultaría en los siguientes beneficios: (i) solucionaría el grave problema de soledad de la orca Kshamenk a través de su integración a ejemplares de su misma especie, brindándole la posibilidad de desarrollar una vida conductual normal y de conformar un grupo social, aspectos de vital importancia para una especie tan sociable como la *Orcinus orca*; (ii) permitirían a la orca Kshamenk convivir con una hembra y desarrollar los comportamientos reproductivos que forman parte de una vida sana y normal de un animal; (iii) significaría una sustancial mejora en la calidad de vida de la orca Kshamenk, lo que también mejoraría su expectativa de vida; (iv) permitiría a Mundo Marino S.A. cumplir con la exigencia de llevar adelante programas reproductivos impuesta por el Reglamento de Oceanarios y por el Decreto 3237/95 de la Provincia de Buenos Aires (reglamento provincial de oceanarios) y la exigencia que los programas de investigación estén particularmente aplicados a mejorar el mantenimiento y supervivencia de los mismos en cautiverio –artículo 6 del Decreto 3237/95 antes mencionado-; (v) posibilitaría a Mundo Marino S.A. lograr que los animales que albergue de la especie *Orcinus orca,* provengan de sus propios procesos auto-sustentables; y (vi) estaría facilitando a una compañía argentina la posibilidad de obtener conocimientos científicos y técnicos de primera línea en materia de reproducción natural y artificial, lo que sin duda se transformaría en un beneficio no sólo para Mundo Marino S.A. sino para sus colaboradores y para quienes en el futuro participen en sus cursos y programas educativos.

En consecuencia, es irrazonable la afirmación que realiza la resolución recurrida en el sentido de que la permanencia de la orca Kshamenk en Argentina constituye un aprovechamiento racional del ejemplar. Tal irrazonabilidad no es sino un vicio en el objeto de la resolución recurrida, que amerita su revocación (artículo 7, inciso "c" de la Ley de Procedimientos Administrativos).

III.b.5. Conclusiones

Como surge de lo expuesto a lo largo de todo el capítulo III.b. de este escrito, la resolución recurrida invoca una serie de argumentos que -por diferentes motivos- resultan inválidos para denegar las autorizaciones necesarias para llevar a cabo el programa reproductivo propuesto por Mundo Marino S.A.

La invalidez de los argumentos amerita la revocación de la denegatoria de las autorizaciones necesarias para concretar el programa reproductivo por la Sra. Ministro, quien luego de dejar sin efecto la resolución recurrida deberá ordenar la emisión de tales autorizaciones.

III.c. Consideraciones vinculadas con la propiedad del orca Kshamenk y la legitimación de mi representada

Finalmente, la resolución recurrida manifiesta que, con motivo de la denegatoria de las autorizaciones, Mundo Marino S.A. no podrá invocar la

lesión a su derecho de propiedad sobre el animal, ya que "*al acogerse al régimen de dicho reglamento, los propios actos de la parte interesada han exteriorizado la aceptación de su carácter de tenedor del animal, incompatible con toda pretensión dominial, pues el Reglamento para establecimientos que albergan mamíferos marinos, además de sentar el principio de la permanencia, en los oceanarios, de los ejemplares varados en las costas -como es el caso de Kshamenk-, se permite a los fines de la rehabilitación, con miras a su liberación, define claramente que la permanencia del animal, temporaria, o definitiva, si la liberación no fuera posible, lo es en concepto de tenencia, no de propiedad (v. Arts. 19 y 20, reglamento cit.)*".

La resolución recurrida también reproduce el texto del proyecto elaborado por el consultor legal de la Secretaría de Ambiente y Desarrollo Sustentable que obra a fs. 963/977. En el dictamen Nº 53914 obrante a fs. 980/981, la Dirección General de Asuntos Jurídicos no analiza este punto del proyecto. En efecto, este dictamen se expide en relación con la Providencia Nº 88/02, con las cuestiones técnicas y con la competencia del Secretario de Ambiente y Desarrollo Sustentable para el dictado del acto.

Afortunadamente, la Dirección General de Asuntos Jurídicos analizó en un dictamen anterior el tema de la propiedad de la orca y de la aplicación de las normas del Reglamento de Oceanarios a la incorporación del animal en el establecimiento de Mundo Marino S.A. En efecto, en el dictamen Nº 48343 (fs. 535/541), el servicio jurídico manifestó lo siguiente: "*La orca en cuestión... al momento en que fue introducida en el oceanario de Mundo Marino Sociedad Anónima era, jurídicamente, una res nullius, en los términos del artículo 2343 del Código Civil. Además, para ese entonces, en 1992 no existían reglamentaciones de pesca – o, mejor dicho, de caza o captura – que la hubieran sustraído del tráfico del derecho privado... En definitiva: por haber ingresado al oceanario antes de la entrada en vigencia del Reglamento para Establecimientos que albergan Mamíferos Marinos, Anexo I, Resolución de la Secretaría de Recursos Naturales y Ambiente Humano Nº 351 del año 1995, se considera que la orca que permanece en las instalaciones de Mundo Marino Sociedad Anónima es propiedad privada de ésta. Eso tiene consecuencias relevantes. En primer lugar, no hay obstáculos jurídicos ni para su exportación, ni para su venta. Ello, por supuesto, dentro de las condiciones operativas y demás requisitos que, para el traslado fuera del oceanario prevé el reglamento de oceanarios. Si, como lo solicita la Fundación Tierra Salvaje, se prohibiera la exportación o la venta del animal fundado en el interés público que exige su permanencia en la República Argentina, en rigor de verdad, puesto que la Constitución Nacional prohíbe la privación de la propiedad salvo en virtud de sentencia fundada en ley o salvo la expropiación, cabría proceder a la expropiación del animal y a indemnizar a Mundo Marino Sociedad Anónima. Aunque nada impide no autorizar la exportación del animal, ni el convenio de reproducción que la fundamenta, si se considera que no se han cumplimentado por la interesada los requisitos puntuales exigidos por el reglamento de oceanarios*".

Con fundamento en dictamen cuyo contenido se transcribió en forma parcial, puede decirse que lo dicho por la resolución recurrida respecto de este tema discrepa con la opinión de la Dirección General de Asuntos Jurídicos.

Al margen de la discrepancia con la opinión del servicio jurídico, cuyos términos mi representada comparte, cabe decir que la resolución recurrida no se ajusta a derecho. En efecto, lo dicho por la resolución recurrida apunta a sugerir que la orca Kshamenk es un bien del dominio público estatal.

En contra de este entendimiento que se sugiere, debe recordarse que uno de los elementos esenciales para que exista dominio público de la Provincia de Buenos Aires sobre la orca Kshamenk es el elemento normativo o legal. Señala Marienhoff que: "*...El dominio público no es una creación de la naturaleza; no hay bienes públicos naturales o por derecho natural. Su existencia depende de la voluntad del legislador. Sin ley que le sirva de fundamento, ningún bien o cosa tendrá carácter dominical. Por eso es que uno de los elementos que integran la noción conceptual de dominio público es el legal o normativo... No hay bienes públicos por naturaleza, ni por derecho natural; es el Estado quien establece el carácter público de las cosas... No habiendo bienes* públicos *por naturaleza, sino únicamente por declaración legal, el acto estatal que establezca la dominialidad de una cosa –cualquiera sea el origen o índole de ésta–, es siempre "atributivo" del carácter público del bien, nunca meramente declarativo...*" (Tratado de Derecho Administrativo, buenos Aires, 1998, t.V, págs. 140/143). De esta manera, para que existiese dominio público sobre la orca Kshamenk, debía existir al momento del varamiento una norma que así lo dispusiese, y esto no sucede.

El elemento normativo antes aludido no puede cumplirse mediante la interpretación de una conducta de la parte, como el acogimiento al régimen del Reglamento de Oceanarios, menos aún cuando tal régimen no contiene una norma expresa que disponga tal consecuencia.

Tampoco puede suplirse el elemento normativo mediante normas posteriores (como por ejemplo, el Reglamento de Oceanarios), ya que, al ser atributivo -y no declarativo- el efecto del acto estatal que establece la dominialidad de una cosa, no puede sostenerse válidamente que una ley posterior otorgue tal carácter al bien y menos aún que lo disponga sin indemnización al propietario del bien que pasa al dominio público. La Dirección General de Asuntos Jurídicos se ha referido expresamente a la imposibilidad de aplicar el Reglamento de Oceanarios a la incorporación de la orca Kshamenk al establecimiento de Mundo Marino S.A., diciendo que: "*Si bien el Reglamento para establecimientos que albergan mamíferos marinos... en su artículo 19 hace expresa reserva de la potestad de la autoridad para disponer la liberación de los animales, también se admite que se permita la permanencia temporaria o definitiva del animal en el oceanario. La admisión de la tenencia definitiva equivale a remover todo obstáculo para la apropiación privada del animal. De todas maneras, esas facultades de la autoridad de aplicación del reglamento de oceanarios, que*

condicionan la apropiación privada de los animales varados naturalmente y rescatados, no puede proyectarse retroactivamente sobre la orca que Mundo Marino S.A. ya poseía al momento de entrada en vigencia del reglamento de referencia".

De cualquier manera, debe tenerse presente que la ejecución del programa reproductivo no importará modificación alguna del status dominial de la orca Kshamenk -cualquiera sea tal status-, ya que el animal es trasladado a los Estados Unidos de América en calidad de préstamo. De hecho, la normativa aplicable admite la exportación de animales de la especie *Orcinus orca*, imponiendo determinadas condiciones para su aprobación, entre las cuales no hay condición alguna referida a la propiedad de tales cetáceos. Por ende, la elucidación del tema vinculado con el dominio de la orca Kshamenk no es relevante en autos.

En apoyo de este entendimiento, cabe citar lo dicho por la Dirección de Asuntos Jurídicos, que en su Dictamen Nº 47618 (fs. 224/227) manifestó que "*Si existen razones científicas y de conveniencia a la luz de la política que, en materia de programas de reproducción, tiene la Autoridad de Aplicación, sobre cuya base pueda considerarse susceptible de aprobación el programa de reproducción en cuestión, este servicio permanente de asesoramiento jurídico debe señalar que, no obstante la presentación realizada por la Fundación Tierra Salvaje, no se advierten óbices jurídicos para esa aprobación*" y que "*las cláusulas contenidas en el convenio celebrado por el oceanario Mundo Marino con su contraparte norteamericana, que aluden a la propiedad de ese oceanario sobre la orca macho de que se trata o sobre alguna de sus eventuales crías, son cláusulas que deben considerarse irrelevantes a los fines de la aprobación del programa de reproducción...*".

También conviene traer a colación lo dicho por el Ministro de Asuntos Agrarios y Producción de la Provincia de Buenos Aires en los considerandos de la Resolución Nº 33/03 que ordenó la emisión de la guía de transporte necesaria para llevar a cabo el traslado de la orca Kshamenk (cuya copia obra agregada a fs. 950 de estas actuaciones): "*...no resulta decisivo, a los fines del otorgamiento del permiso solicitado, la cuestión de la dominicalidad de la orca de marras*".

Además, al margen de la cuestión relativa al status dominial de la orca Kshamenk, es claro que la resolución recurrida reconoce a mi representada al menos como legítimo tenedor del animal. De hecho mi representada ha rescatado, rehabilitado y albergado a la orca Kshamenk bajo supervisión directa de las autoridades competentes desde el año 1992, proveyéndole alimento y dispensándole múltiples cuidados.

Esta circunstancia, sumada al hecho de que la Corte Suprema de Justicia de la Nación tiene dicho que "*El término propiedad cuando se lo emplea en los artículos 14 y 17 de la Constitución... comprende... todos los intereses apreciables que el hombre pueda poseer fuera de sí mismo, fuera de su vida y de su libertad. Todo derecho que tenga un valor reconocido como tal por*

la ley, sea que se origine en las relaciones del derecho privado, sea que nazca de actos administrativos (derechos subjetivos privados o públicos) a condición de que su titular disponga de una acción contra cualquiera que intente interrumpirlo en su goce, así sea el Estado mismo, integra el concepto constitucional de propiedad...", (Fallos 145:327), evidencia que la resolución recurrida, en cuanto deniega las autorizaciones necesarias para concretar el programa reproductivo propuesto para la orca Kshamenk, lesiona el derecho de propiedad en mi representada.

En verdad, mi parte no entiende cómo la resolución recurrida afirma que "*...Mundo Marino S.A. no puede invocar un derecho de propiedad sobre el animal, con el consecuente contenido de uso y goce del mismo, que pudiera verse lesionado por una decisión de la Secretaría de Ambiente y Desarrollo Sustentable denegatoria de su solicitud de aprobación del convenio reproductivo en cuestión y de autorización de la exportación del ejemplar*". Mundo Marino S.A. posee un derecho subjetivo que la resolución recurrida lesiona y tiene legitimación para recurrir tal decisión, que puede caracterizarse como derecho de propiedad, y esto no puede ser objeto de discusión, máxime cuando se ha ampliado sustancialmente la legitimación en la materia ambiental con la Reforma de la Constitución Nacional en 1994 (artículos 41 y 43).

Por ende, la resolución recurrida en este punto también resulta carente de causa, en cuanto no tiene sustento en el derecho aplicable, correspondiendo su revocación en los términos del artículo 7 inciso b) de la Ley de Procedimientos Administrativos.

IV. Prueba

Mi representada ofrece la siguiente prueba de su parte:

- Anexo I: copia del artículo referido a la orca Kshamenk publicado en la revista de la Fundación Vida Silvestre del mes de octubre de 2002

- Anexo II: mensaje electrónico circulado recientemente por la Fundación Tierra Salvaje

- Anexo III: fotografías de las lesiones que padecía la orca en oportunidad de ser hallada después del varamiento

- Anexo IV: (i) copia del artículo "*Encierren a Willy*" publicado por el New York Times y reproducido por la revista "VIVA" editada por el Diario Clarín; (ii) copia de la noticia aparecida el día 4 de setiembre de 2002 en el diario La Nación *titulada "Keiko elige el cariño y no la libertad*"; (iii) impresión de la propia página de Internet de la Secretaría de Ambiente y Desarrollo Sustentable que reproduce el artículo publicado por el diario "La Nación"

- Anexo V: copia del informe producido por el Dr. Jim Antrim, quien supervisa el equipo que tuvo a su cargo el traslado de la orca Shouka desde Francia hasta Estados Unidos y que tendrá a cargo el viaje de la orca Kshamenk desde Argentina a los Estados Unidos de América.

V. Reserva caso federal

Mi representada hace reserva de su derecho de ocurrir ante la Corte Suprema de Justicia de la Nación por la vía que establece el artículo 14 de la Ley 48, atento que encontrarse involucradas cuestiones de carácter federal, como su derecho a exportar mercadería (artículo 75, inciso 1 y 13 de la Constitución Nacional) y la interpretación de normas del mismo carácter, como la Ley 22.344 que incorpora al ordenamiento legal argentino la Convención CITES, y la Resolución 351/95 que aprueba las normas de fondo que regulan las cuestiones atinentes a los mamíferos marinos. Asimismo, en cuanto en autos se encuentran comprometidas las garantías constitucionales de la propiedad, del debido proceso legal y de la razonabilidad (artículos 17, 18 y 28 de la Constitución Nacional).

VI. Petitorio

Por lo expuesto, mi representada solicita:

1. Tenga por interpuesto el presente recurso jerárquico, en los términos de los artículos 89 a 92 del Decreto 1759/72 reglamentario de la Ley de Procedimientos Administrativos, contra la Resolución 289/03 de fecha 24 de marzo de 2003 emitida por el Sr. Secretario a cargo de la Secretaría de Ambiente y Desarrollo Sustentable de la Nación.

2. Por las razones expuestas en el capítulo III de este escrito, revoque en todas sus partes la resolución recurrida y ordene emitir las autorizaciones necesarias para dar cumplimiento al programa reproductivo cuya propuesta dio origen a estos actuados.

Sin otro particular, saludo a la Sra. Ministro muy atentamente.

RICARDO E. MENDEZ

SECRETARIA DE DESARROLLO SUSTENTABLE Y POLITICA AMBIENTAL
15 ABR 2003
MESA DE ENTRADAS
INGRESO

APPEAL BEFORE HIGHER ADMINISTRATIVE AUTHORITY

To the Minister, Lic. Nélida Doga
Ministry of Social Development of the Nation

Reference Administrative file No. 70-3350/2001

I, Ricardo Méndez, in my capacity as agent of **MUNDO MARINO S.A.**, an already accredited capacity, domiciled in Avda. Córdoba 937, 3er. Piso Of. 2, Ciudad de Buenos Aires for purposes herein, I state as follows:

I. Subject Matter

I hereby appeal before higher administrative authority, pursuant to provisions set forth in Sections 89 to 92 of Decree 1759/72 which regulates the National Law on Administrative Proceedings (hereinafter "Administrative Proceeding Law"), against Resolution 289/03 dated 24th of March of 2003 issued by the Secretary in charge of the National Environment and Sustainable Development Secretariat. This resolution was notified to my party on the 24th of March of 2003, therefore this appeal is in due agreement with law.

II. Appealed resolution

In the appealed resolution, the National Environment and Sustainable Development Secretary decides: (i) to take over the decision on dealings started by Mundo Marino S.A. in order to request the necessary authorisations to fulfil the reproduction agreement entered into concerning the *Orcinus orca* identified as Kshamenk; (ii) to revoke, on illegality grounds, Decision No. 88/02 dated 31st of October of 2002 issued by the former National Ichthyc and Aquiferous Resource Bureau, which approved the reproduction programme proposed by Mundo Marino S.A. for Kshamenk orca; and (iii) to deny Mundo Marino S.A. the approval of the reproduction programme proposed for Kshamenk orca and any other authorisation related to said programme fulfilment.

Since the appealed resolution decides to deny all the authorisations related to the fulfilment of the reproduction programme proposed by Mundo Marino S.A. for Kshamenk orca, my principal also deems denied the request for reversal of decision filed and appearing in pages 748/754.

The appealed resolution considers that Decision No. 88/02 is a null administrative act since its determination is contrary to the objections filed by consulted prestigious organisations with expert knowledge on this issue and by the associations admitted as parties in the court file, and fails to refute with reasonable arguments said objections, which shows it is a dogmatic and unreasonable decision which lacks sufficient motivation.

On the other hand, the appealed resolution bases the denial of the authorisations necessary to fulfil the reproduction programme proposed for Kshamenk on the following reasons: (i) approval of reproduction programme would be contrary to the main goal of marine mammal protection set forth in SRNyAH Resolution No. 351/95 ("Oceanary Regulation"), since transportation of Kshamenk orca to destination implies high risk to its health and life; (ii) the proposed reproduction programme is not a developed stage of a reproduction organic programme, but it seems to be an isolated and sudden decision, with no coherent context background; (iii) there are proved and safe procedures which avoid animal relocation to successfully achieve female fecundation, like assisted reproduction with sperm extracted by electric ejaculation and transportation in liquid nitrogen samples; and (iv) the approval of the reproduction programme would be contrary to the reasonable exploitation of the animal, which should essentially benefit the Argentine community through adequate environmental and ecological education and research programmes, carried out within the scope of the Oceanary Regulation.

Finally, the appealed resolution states that Mundo Marino S.A. is not entitled to allege that its property right over Kshamenk has been damaged in view of the denial of the requested authorisation. In fact, the appealed resolution considers the Oceanary Regulation system is incompatible with any property claim over marine mammals, and said system defines their stay in oceanaries as bare possession but not ownership. Likewise, the appealed resolution considers that Mundo Marino S.A. has accepted its condition of mere holder of Kshamenk orca when accepting the Oceanary Regulation system.

III. Defects affecting the appealed resolution

The appealed resolution should be declared null and void, since it lacks cause and fails to base on facts or applicable law (Section 7, subsection "b" of Administrative Proceeding Law).

We hereinafter explain how the above-mentioned defect affects the appealed resolution.

III.a. Revocation of Decision No. 88/02

As it has already been mentioned, the appealed resolution revokes Decision No. 88/02, because it considers that the judgement comprised therein is contrary to the objections posed by scientific and ecological organisations

and fails to refute them with reasonable arguments, which renders it a null administrative act with no motivation whatsoever.

Decision No. 88/02 was issued on the 31st of October of 2002 by the former National Ichthyc and Aquiferous Resource Bureau, the application authority of the Oceanary Regulation and scientific authority of the Wild Flora and Fauna Endangered Species International Trade Convention ("CITES Convention", Law 22,344).

Decision No. 88/02 is brief: it states that after assessing records and specially taking into account decisions by the General Bureau of Legal Matters of the Social Development Ministry and the opinions issued by the Scientific Research Austral Centre, the Patagonic National Centre, the Buenos Aires Province Fishing Activity Control Bureau, the "Bernardino Rivadavia" Natural Sciences Argentine Museum and the Animal and Plant Health Inspection Service of the United States of America, this Bureau "*considers that there are enough reasons to approve the Reproduction Agreement... pursuant to provisions set forth in Section 8 of Oceanary Regulation*".

Section 8 of the Oceanary Regulation establishes that "*in the event an oceanary carries out a marine mammal reproduction programme, it shall count on the approval of the application authority*".

Statements of the appealed resolution are inexact, in the sense Decision No. 88/02 (i) departs from opinions issued by organisations with expert knowledge on the matter and (ii) fails to refute with reasonable arguments the objections made by said organisations and the obstacles mentioned by the associations which are considered parties in the court file.

III.a.1. Decision No. 88/02 and opinions with expert knowledge on the matter

It should be pointed out that it is not correct to say that the Ichthyc and Aquiferous Resources Bureau contradicts the statements of organisations with expert knowledge on the matter. Organisations with expert knowledge on the matter have expressed different opinions, so the lack of uniformity in opinions does not allow us to speak of contradiction.

The court file contains eight opinions issued by organisations with expert knowledge, six of which are expressly mentioned in the appealed resolution foundations.

1. In the first place, opinion issued by Dr. Ricardo Bastida, who spoke in favour of the reproduction programmed proposed by my principal in a long report of 15 pages (pages 16/32).

This report carries out a thorough analysis of all existing possibilities concerning Kshamenk's future. For the sake of briefness, we hereinafter list the topics dealt with in the report: review of the animal's background,

animal present condition, stay at current site, possibilities to have a new couple, Kshamenk's liberation, survey of existing information concerning cetacean freeing, recommendations about cetacean freeing, updated information about artificial insemination and recommendations thereof, integration of animal to a reproduction programme, analysis of different alternatives, review of requirements for relocation and animal lending, study of reproduction agreement background and conclusion.

Dr. Bastida is Main Researcher at CONICET and Regular Professor of the Marine Sciences Department and Marine Mammal Workteam Director in Mar del Plata University. His opinion deserves special consideration, since he is the most important cetacean expert in Argentina – both cetaceans living in Nature and in captivity -, and his professional expertise is known all over the world. Dr. Bastida is frequently consulted by state-owned entities (whether national, provincial or municipal) as well as by private organisations. For example, Dr. Bastida's opinion has been specially taken into account in Federal Court of First Instance on Administrative Matters No.2 in the sentence issued in the case "*Kattan, Alberto E. and other vs. National Executive Branch*" dated 10th of May of 1983, which hindered the capture of specimens of *Cephacrhynschus commersonii* species (dolphins or *toninas overas*). The fact that the opinion of Dr. Bastida has been provided by my principal and that in the past Mundo Marino S.A. enjoyed the privilege of having him (Dr. Bastida) as Scientific Director, in no way should diminish the merits of this professional expertise.

Decision No. 88/02 coincides with the opinion issued by Dr. Batista on the merits to approve the reproduction programme proposed by Mundo Marino S.A. when the latter expresses "*having analysed all possible alternatives concerning what to do with Kshamenk orca, we come to the conclusion that the best of them all –both for the animal and the institutions involved – is to transfer it for reproduction ends to an institution with such corporate and scientific prestige as the one proposed by Mundo Marino S.A.*".

2. On the other hand, the Scientific Research Austral Centre (page 220), when consulted by the former Ichthyc and Aquiferous Resources Bureau, answered that the institution "*do not have experts in matters related to marine mammal captivity, which prevents us from issuing an opinion on this topic*". Logically enough, it cannot be said that the content of this answer opposes to Decision No. 88/02, but it contributes to the evaluation of technical reports on the reproduction programme when saying that the same shall be performed by experts in marine mammals in captivity.

3. The former Ichthyc and Aquiferous Resources Bureau also consulted CONICET National Patagonic Centre, which issued opinion on the matter (pages 230/232). Summing up, the Centre stated : (i) that the orca's relocation is irrelevant when considering animal species conservation and it is relevant when considering the individual animal welfare; (ii) that the project will contribute to the knowledge of reproductive biology of this species in captivity, that the orca youngs will benefit from hybrid value, that even though the progenitor orcas belong to different populations there is

genetic continuity between them, and there are doubts about whether the genetic contribution from a Southern Hemisphere orca may benefit a population of orcas in captivity apart from providing them genetic variability; (iii) benefits concerning animal welfare and benefits related to the reproduction project will be none should Kshamenk orca die; (iv) the project will effectively contribute to scientific knowledge concerning the implementation of assisted reproduction techniques; (v) assisted reproduction techniques have experienced significant development in recent years in other species, and in this species in particular, the birth of an orca by means of artificial insemination has been achieved; the application of this technique in this case will have the advantage it will not be necessary to relocate the animal and adapt it to the U.S.A. oceanary, but it will not solve the loneliness problem; (vi) it is not clear how the benefits derived from the project will reach the scientific community, since participant companies have agreed on confidentiality of results; and (vii) the proposal bases on scientific, humanitarian and economic grounds; economic benefits will be larger than scientific ones because the companies involved will have offsprings of orcas in captivity which will provide continuity to their educational-entertaining activities.

From this judgement we cannot infer a negative opinion about the reproduction programme. On the contrary, the National Patagonic Centre clearly states that the project filed by Mundo Marino S.A. will benefit the individual welfare of Kshamenk orca (which should not be confused with matters related to species conservation, which in this case are irrelevant), it will contribute to reproductive biology knowledge of the specie in captivity, it will allow participant entities to obtain offsprings to continue with their educational and entertaining activities, facts which obviously depend on the animal's survival. Consequently, it cannot be said that Decision No. 88/02, when considering there is enough merit to approve Mundo Marino S.A.'s reproduction programme, directly opposes the resolution concerned.

4. The National Ichthyc and Aquiferous Resources Bureau also consulted "Bernardino Rivadavia" Argentine Natural Sciences Museum, who answered through a report made by Lic. Hugo P. Castello, in charge of Marine Mammal Laboratory.

This report is the only one which is totally contrary to the development of the reproduction programme and therefore it can be said it is opposed to resolutions of Decision No. 88/02.

We will hereinafter deal in detail with the content of this report and with the analysis of it made by the former National Ichthyc and Aquiferous Resources Bureau.

5. Another entity which was consulted by the former National Ichthyc and Aquiferous Resources Bureau is the former Fishing Activity Control Bureau (nowadays Fishing Activity Under-Secretariat) under the Ministry of Agriculture and Production of the Province of Buenos Aires. This body

answered the consultation by carrying out a series of technical commentaries.

Anyhow, the position of the competent authorities of the Province of Buenos Aires has been expressed through their issuance of Resolution 33/03 of the Ministry of Agriculture and Production of the Province of Buenos Aires dated 6th of February of 2003, by which the Ministry decided to authorise the relocation of Kshamenk orca, consequently issuing "*the transit special permit, in favour of Mundo Marino S.A. for the transfer, exit and transportation of the orca specimen (Orcinus orca) called Kshamenk, from the Oceanary which is property of the above-mentioned company... and to Ezeiza International Airport*" (page 950).

In view of this, it may be said that Decision No. 88/02, when considering there is enough merit to approve the reproduction programme proposed by Mundo Marino S.A., agrees with the Ministry of Agriculture and Production of the Province of Buenos Aires which decided to grant one of the necessary authorisations to carry out the project concerned.

6. Apart from the above-mentioned opinions, the court file includes three additional reports supplied by Mundo Marino S.A., all of them favourable to the development of the proposed reproduction programme. Two of these reports have not been mentioned in the appealed resolution.

The appealed resolution does mention the opinion issued by Dr. Lorenzo Von Fersen, scientific co-ordinator of Tiergarten Nuergerg from Germany, who said that "*The orcas are not social species and their psychical and physical welfare in captivity, as well as the growth and development of specific behaviour of the species, depend, among other factors, on the social interaction with other animals of the same species... The evolution and development of modern zoos have proved that the handling of wild animals not only secures their physical – psychical welfare, but it is also important to establish self-sustainable populations. By means of co-ordinated reproduction programmes, which in many cases involve movement of animals from one site to another, great progress has been made at present*" (pages 33/34).

The American Zoo and Aquarium Association, Marine Mammal Taxom Advisory Group of the United States of America, (Taxom Advisory Group on Marine Mammals), is the organisation in charge of approving and supervising relocation of marine mammals among zoos in the United States, within the scope of reproduction co-operation programmes. This report lists the benefits which will be obtained from the performance of the project proposed by Mundo Marino S.A. for Kshamenk and concludes with an expression of support, by stating "it is the best for this animal" (pages 37/40).

The Alliance of Marine Mammal Parks and Aquariums, the entity with greatest professional experience in maintenance, handling and reproduction of marine mammals in the world, declared that "*It is good to know the*

animal will couple with another one from its own specie in this country, not only because of its genetic potential, but taking into account the animal welfare as well... Marine mammals should only be kept in isolation for medical treatment purposes" (pages 35/36).

7. The opinion of *Fundación Vida Silvestre* shall be added to these reports, which also spoke in favour of carrying out the reproduction programme. Copy of the article published by this organisation's magazine in October 2002 is hereby enclosed. My principal deems it convenient to mention this fact, since this organisation is the most important non-governmental organisation in Argentina on species and environment conservation.

From statements above we may conclude that Decision No. 88/02 agrees with most of the entities with proficiency in the matter and is only totally opposed to the opinion issued by "Bernandino Rivadavia" Argentine Natural Sciences Museum.

Therefore, the appealed resolution, when stating that Decision No. 88/02 departs from statements made by entities with proficiency in the matter fails to consider applicable facts, consequently it lacks cause in the terms of Section 7, subsection "b" of Administrative Proceeding Law.

III.a.2. Decision No. 88/02 fails to refute with reasonable arguments the objections filed by entities with proficiency in the matter and by ecological associations considered party in court file

The appealed resolution severely criticises Decision No. 88/02, describing it as a dogmatic and unreasonable decision with not enough motivation. In this sense, the appealed resolution then considers that the former National Ichthyc and Aquiferous Resources Bureau approved the reproduction programme proposed by Mundo Marino S.A. with no previous analysis of objections filed by entities with proficiency in the matter and by ecological organisations considered parties in the court file.

It is true that Decision No. 88/02 is brief and that it fails to include the analysis of objections filed by "Bernardino Rivadavia" Argentine Natural Sciences Museum (as explained above, there is no other entity with proficiency in the matter which has expressed opposition to the development of the programme) and by organisations considered parties in the court file (both, *Wild Earth Foundation* and *Fundación Fauna Argentina* have been considered parties in the court file, though main opposition has been brought about by the former).

However, this does not mean the National Ichthyc and Aquiferous Resources Bureau has not analysed objections. On the contrary, the court file includes several reports issued by said Bureau where it analyses said objections.

"Bernardino Rivadavia" Argentine Natural Sciences Museum and *Wild Earth Foundation* have expressed similar objections concerning the

reproduction programme proposed by Mundo Marino S.A.. This similarity can be understood when reading the public gratitude expressed by *Wild Earth Foundation* to Lic. Castello for his information and advice on this matter (copy of the electronic message of recent circulation issued by *Wild Earth Foundation* is hereby enclosed). We hereinafter summarise the main objections posed by these entities and comment on the analysis on them carried out by the National Ichthyc and Aquiferous Resources Bureau before the issuance of Decision No. 88/02, as it appears in the referenced court file.

- Objections related to the apparently suspicious behaviour of Mundo Marino S.A. in the beaching and rehabilitation of Kshamenk orca.

Both "Bernardino Rivadavia" Argentine Natural Sciences Museum and *Wild Earth Foundation* have expressed that the beaching of Kshamenk orca was not an accidental beaching but a capture carried out by Mundo Marino S.A., and that the animal did not need special veterinarian medical assistance.

However, neither the Museum nor the Foundation have provided evidence to prove these facts. This evidence has been expressly requested by the Wild Fauna and Flora Bureau in note sent to the Production Ministry of the Province of Chubut when answering the letter which opposed to the reproduction programme. In said note, the Wild Fauna and Flora Bureau has stated that "*contribution of the Province of Chubut would be important to explain the real origin of the animal*" (pages 669/670). However, the Ministry of Production of Chubut has limited its answer to expressing that "*those information contributions refer to the reports which the Environmental Organisation, Wild Earth Foundation (WEF) will provide to cooperate in the explanation of the animal origin*" (page 770). Up to the present, said evidence has not been filed. This lack of proof turn accusations into mere conjectures, inferences and subjective assumptions (and, obviously, biased). These assertions, made by "Bernardino Rivadavia" Argentine Natural Sciences Museum, reduce the seriousness and credibility of the report prepared by said institution, which has been granted in this case, an importance it certainly does not deserve.

It is important to point out that Kshamenk orca was found in 1992 in the swamps of Samborombón Bay, approximately 72 hours after beaching, with severe burning due to long exposure under the sun. Rescue as well as rehabilitation of Kshamenk were informed by Mundo Marino S.A. to national and provincial authorities, notwithstanding the fact that at that time there was no special procedure to follow in order to incorporate animals to oceanaries for rehabilitation purposes. Photographs of injuries suffered by the animal, which were in due time observed by the participating authorities are hereby enclosed. For example, the former Under-secretary of Natural Resources and Human Environment, Dr. Humberto Ruchelli, and the former Director of Ichthyc and Aquiferous Resources, Lic. Marcela Álvarez, carried out an inspection and were able to verify the condition of the concerned animal. These photographs, together with some film photograms, were personally delivered by my principal to the current Secretary of

Environment and Sustainable Development, therefore this authority is well aware of the false information provided by the above-mentioned institutions.

As regards this issue, Mundo Marino S.A. has also provided evidence of the frequency of beaching in the area close to "Mundo Marino" premises in San Clemente del Tuyú (Samborombón Bay navigation map, journalistic news related to beaching, statements of father Mamerto Menapace when he found Belén orca beached, copy of Resolution 150/99 of the then Ministry of Agriculture Affairs of the Province of Buenos Aires appointing Fundación Mundo Marino as Provincial Marine Fauna Rescue and Rehabilitation Centre, see pages 473/480, 499/507, 536/539) and evidence related to the accidental beaching of Kshamenk orca (notary certified statements by people participating in the rescue, correspondence exchange between Mundo Marino S.A. and the then competent authorities due to this beaching, statements of experts who participated in the animal rehabilitation, see pages 301/309, 335/336, 496/498).

When the provincial and national regulations of oceanaries appeared in 1995 (Resolution SRNyAH 351/95 and Provincial Decree No. 3237/95 respectively), Mundo Marino S.A. obtained the authorisation to run the premises and the acknowledgement of its legitimate rights over the animals dwelling therein, as it is set forth in the resolution issued by the then Fishing Activity Control Bureau of the Province of Buenos Aires (Resolution No. 008/96) and the entrance certificate issued by the National Ichthyc and Aquiferous Bureau. Besides, it should be pointed out that since 19th of November of 1992 when the life of the animal was saved out of the beaching and rehabilitation started, Mundo Marino S.A. has had public and pacific possession of Kshamenk orca, which means possession for over ten years under the supervision of competent authorities, with no official objection from any person or entity whatsoever.

The National Ichthyc and Aquiferous Resources Bureau expressly mentioned the topic of the orca's origin when answering the question made by the National Marine Fisheries Service – NMFS of the United States of America, about whether Kshamenk orca had been captured legally and if it was the legal possession of Mundo Marino S.A. In the answer, appearing in pages 412/415, the National Ichthyc and Aquiferous Resources Bureau (i) described the circumstances in which Kshamenk orca's beaching took place in Samborombón Bay; (ii) referred to the communication sent at that time by Mundo Marino S.A. to the authorities of the Province of Buenos Aires; and (iii) stated Mundo Marino S.A. was authorised to operate, within the scope of the Oceanary Regulation which requests oceanaries existing before the passing of this rule, the obtention of the premises authorisation to operate, for which they shall provide information, among other things, about the way species dwelling in the premises have been obtained (see Section 3, subsection "b" and Section 4 of Oceanary Regulation). Subsequently, the National Ichthyc and Aquiferous Resources Bureau went back to the topic in the report sent to the National Sustainable Development Bureau, where it referred to the objections posed by the Wild Earth Foundation concerning

Kshamenk orca beaching. In fact, in pages 675/676 the National Ichthyc and Aquiferous Resources Bureau expressed that "*as regards the violation by Mundo Marino S. A of Section 3° subsection b) of the Oceanary Regulation, alleged by Wild Earth Foundation..., it should be said that the violation is disqualified according to the evidence appearing in our files*".

Besides, which could be the reasons for Mundo Marino S.A. to falsify a beaching in 1992, when there were no regulations concerning the maintenance of marine mammals in captivity?

Consequently, the National Ichthyc and Aquiferous Resources Bureau has analysed the objections related to the origin of Kshamenk orca before issuing Decision No. 88/02.

- Questions related to Kshamenk stay at an oceanary

The Wild Earth Foundation proposes that Kshamenk orca be freed and returned to its natural environment, which it supposes is located in the colonies of this species in Península de Valdés, Province of Chubut.

Possibly, this is the most irresponsible and scandalous of all proposals, which is analysed in the report issued by the above-mentioned Dr. Ricardo Bastida. There are no scientific protocols related to the return to Nature of cetaceans which have lived in captivity. The few experiments carried out have ratified this fact. On this regard, an example is the freeing of Keiko orca (the following information concerning this matter is enclosed: (i) copy of article entitled "*Enclose Willy*" published by New York Times and reproduced by "VIVA" magazine, edited by Clarín newspaper; (ii) copy of the news appearing on 4th of September of 2002 in La Nación newspaper, entitled *"Keiko chooses love instead of freedom*"; (iii) printed copy of the Internet own page of the Environment and Sustainable Secretariat which reproduces the article published by "La Nación" newspaper).

This question has also been analysed by the National Ichthyc and Aquiferous Resources Bureau in the report submitted to the National Sustainable Development Bureau, where it mentioned the objections posed by the Wild Earth Foundation as regards Kshamenk's beaching.

In this sense, in the answer to NMFS which appears in pages 412/415 mentioned above, this agency has expressed that "*when the specimen was taken to the Oceanary for its rehabilitation, there was no regulation in the country ruling the stay in captivity of marine mammals in oceanaries. The Resolution in force nowadays was passed on the 22nd of December of 1995, when freeing the animal to its natural environment was deemed to have little probability of success. As it is explained in our writing, the decision taken at that time based on the criterion supported by the international community concerning the return to natural environment of cetaceans which have lived in captivity for a long time. In this sense, the European Association for Aquatic Mammals establishes that there is general lack of evidence of cetaceans surviving once they are freed and, consequently, any*

attempt to free them should be considered experimental. Said association, therefore, does not recommend freeing cetaceans which have been kept in captivity for a long time. The position of NMFS on this issue has also been taken into account. They support that the freeing of marine mammals which have remained in captivity for a long time may, not only damage the freed animals but the ones which may have contact with the former in the natural environment. The aspects which cause uncertainty include the ability of the animal to obtain food, defend from predators, the possibility to interact with people and crafts, transmission of diseases and undesirable genetic exchange between the freed animal and marine mammal populations living in the natural environment, as well as any other behaviour pattern developed in captivity which may affect social behaviour of wild animals as well as the social integration of the freed animal".

The National Ichthyc and Aquiferous Resources Bureau has repeated its position on this matter in the report submitted to the National Sustainable Development Bureau also mentioned above and appearing in pages 675/676. As regards Section 19 of the Oceanary Regulation, which requests the freeing of cetaceans which have been incorporated to premises for rehabilitation purposes, the National Ichthyc and Aquiferous Resources Bureau has stated the following: "*As regards the statements made by claimant concerning the non-compliance by the above-mentioned Oceanary of provisions set forth in Section 19° of Oceanary Regulation, it is clear that in the evidence appearing in the Court file there are Technical Reports which in due time advised not to free Kshamenk orca; evidences which once again weaken the allegations in this sense issued by the Wild Earth Foundation*".

Finally, the National Ichthyc and Aquiferous Resources Bureau expressed in the report sent to the Wild Fauna and Flora Bureau, appearing in pages 698/701 that: "*...the specimen has been kept in captivity for approximately ten years, having entered Mundo Marino S.A. oceanary for rehabilitation purposes. This time span does not allow us to consider as viable, at present, its freeing to the natural environment and consequently its full interaction with our marine population*".

Consequently, the National Ichthyc and Aquiferous Resources Bureau has also analysed the objections related to the illegitimacy of Kshamenk's stay in the oceanary before the issuance of Decision No. 88/02.

- Objections related to the danger derived from Kshamenk orca relocation.

The "Bernardino Rivadavia" Argentine Natural Sciences Museum –though it states it has no information on this matter – and the Wild Earth Foundation, also object the reproduction programme proposed by Mundo Marino S.A. invoking –but with no evidence whatsoever – the risks derived from transporting Kshamenk orca. Here we should point out the incoherence of Wild Earth Foundation's behaviour, since on the one hand this organisation scandalises when considering the supposed danger derived

from moving, and on the other hand it announces its intention to take the animal to a "marine cage" in the coast of Chubut Province (pages 653/654), with no other purpose than tourist exploitation.

The National Ichthyc and Aquiferous Resources Bureau has analysed in detail the conditions and the duration of transportation of Kshamenk orca from Mundo Marino S.A. premises in San Clemente del Tuyú, Argentina, up to Six Flags Worlds of Adventure premises in Aurora, Ohio, Cleveland, United States of America. To develop this analysis, the National Ichthyc and Aquiferous Resources Bureau has requested information to Mundo Marino S.A. and to NMFS, which was filed together with a video-cassette which contains the filming of Shouka orca transportation, to illustrate the transportation system to be used with Kshamenk.

The analysis is extensively developed in the report sent to the Wild Fauna and Flora Bureau appearing in pages 698/701. In this report the National Ichthyc and Aquiferous Resources Bureau describes in detail the relocation sequence and points out that, according to the report prepared by the NMFS the transportation will be carried out "using professionally accepted techniques and complying with all *regulations, standards and conditions established by the country's rules on this matter, such as the Marine Mammal Protection Act, Animal Welfare Act and Lacey Record*" and that "*regulations set forth in the 9th Code of Federal Regulations, Section 3.116 «Transit Care » shall be complied with, as applied by the Animal and Plant Health Inspection Service – APHIS)*". Likewise, the report of the National Ichthyc and Aquiferous Resources Bureau states that the report of the NMFS mentions that "*guidelines and containers established in the «Regulation for Live Animal Transportation» published by the International Air Transportation Association (IATA) shall be used to transport marine mammals of Orcinus orca species*". As regards duration of transportation, the National Ichthyc and Aquiferous Resources Bureau points out that according to the schedule filed by Mundo Marino S.A. it is estimated the same will last a maximum of 22 hours, with 20 hours real time plus two hours for safety, which the Bureau considers complies with provisions of Section 40 of Oceanary Regulation, which establishes that animals should not be kept in transportation containers for over 24 hours, though for longer trips this term may be extended by means of veterinarian medical certificate authorising said extension.

Therefore, the National Ichthyc and Aquiferous Resources Bureau also analysed the questions related to conditions and duration of transportation of Kshamenk orca before issuing Decision No. 88/02.

- Objections related to legal matters

The "Bernardino Rivadavia" Argentine Natural Sciences Museum and *Fundación Fauna Argentina* have carried out a number of legal considerations aimed at supporting that Mundo Marino S.A. rights over Kshamenk orca are not legitimate and that consequently, the animal should be freed and returned to Nature.

For example, both entities have quoted Decree 1216/74, by which the National Executive Branch prohibited "*the hunting of sea lions, elephant seals, seals, penguins and similar species of marine fauna determined by the Natural Resources and Human Environment Secretariat, either for sports or trade purposes until biological studies being performed are completed*". The "Bernardino Rivadavia" Argentine Natural Sciences Museum and the *Fundación Fauna Argentina* have quoted this rule to support the illegitimacy of incorporating Kshamenk orca to Mundo Marino S.A. premises. In view of this allegation, the National Ichthyc and Aquiferous Resources Bureau requested the opinion of the General Bureau of Legal Matters from the Ministry of Social Development of the Nation (page 450), which issued decision No. 48343 where it stated that "*Decree 1216/74... in no way prohibited the capture of orcas, because its expository section only mentioned sea lions, and its provision section, which prescribed the prohibition to hunt, only referred to sea lions, elephant seals, seals, penguins and «similar species». The orca is a cetacean, and therefore belongs to another class of marine mammals which cannot be considered similar to the ones listed in the referenced decree, moreover when prohibitions, by hermeneutical rule, are restrictively interpreted. Besides, the mentioned decree only established a temporary prohibition, until biological studies to be carried out by the then Natural Resources and Human Environment Secretariat were completed... It is not reasonable, on the other hand, to abuse of a temporary rule thirty years after its passing*" (pages 535/541).

The Wild Earth Foundation has quoted Law 25,052 which prohibits hunting or capture with nets or forcing beaching, of specimens of *Orcinus orca*. This issue was also discarded by the National Ichthyc and Aquiferous Resources Bureau and submitted to consideration of the General Bureau of Legal Matters of the Ministry of Social Development of the Nation, because it is a rule which has been in force since late 1998 (decision No. 48343, page).

In addition, the Wild Earth Foundation has given Kshamenk orca the character of "*federal natural resource*" (sic), granting it the character of National State public domain asset. The "Bernardino Rivadavia" Argentine Natural Sciences Museum has also expressed that Mundo Marino S.A. only holds possession or custody of Kshamenk orca and shall not be authorised to export it. At the request of the National Ichthyc and Aquiferous Resources Bureau, the General Bureau of Legal Matters of the Ministry of Social Development analysed this issue in decisions No. 47618 (pages 224/227) and No. 48343 (pages 538/541). On this regard, this legal counsel service stated that "*the concerned orca... at the time it was introduced in Mundo Marino S.A. oceanary was, legally, a res nullius, under the terms of Section 2343 of the Civil Code. Besides, at that time, 1992, there were no fishing regulations –or, better said, hunting or capture regulations – which would have taken it away from private law traffic*". The General Bureau of Legal Matters continues by stating that Resolution 351/95 "*prohibited hunting, capture or appropriation and transit within national jurisdiction, of any cetacean and pinnipedian species which are listed in Exhibit I, where*

Orcinus orca appears" ... "*As from the date of validity of this Resolution, orcas were left outside private trade traffic, and their private appropriation was not allowed pursuant to terms of Section 2343 of Civil Code. But this new legal character cannot have retroactive effect: this means it is not applicable to the orca possessed by Mundo Marino in its oceanary, which was obtained before*"... "*due to the fact it entered the oceanary before the... Resolution... No. 351 of year 1995, it is considered that the orca which remains in Mundo Marino S.A. premises belongs to the latter. This has relevant consequences. In the first place, there are no legal obstacles to its exportation or sale*".

From statements above we derive that, in the first place the National Ichthyc and Aquiferous Resources Bureau analysed the issues set forth by the "Bernardino Rivadavia" Argentine Natural Sciences Museum and the Wild Earth Foundation and requested the opinion of the General Bureau of Legal Matters of the Ministry of Social Development about said objections (pages 218/219 and 450). Here, we should specially mention the statements of the National Ichthyc and Aquiferous Resources Bureau in its writing sent to the National Sustainable Development Bureau, requesting the participation of the legal service: "*it would be specially interesting for the assessment of the request made by Mundo Marino S.A. Oceanary, the Decision issued by the Legal Service of this Secretariat about this matter, as well as about the terms included in the filing... made by the Wild Earth Foundation..., since the latter questions, among other topics, the legal nature of the title to the animal as well as well as to potential offsprings, ...the obtention of the animal,, ...the character of the orca as federal natural resource and the study of clauses 2 and 3 of the lending agreement filed by Mundo Marino, appearing in pages 154/155, while the above-mentioned title to property is reviewed.*" (pages 218/219). We should also remember that the National Ichthyc and Aquiferous Resources Bureau, after receiving the first answer from the "Bernardino Rivadavia" Natural Sciences Museum, sent a letter to its authorities (which appears in page 213) stating that their concerns had been included in the court file and would be submitted to the relevant legal service.

Secondly, it is evident that the National Ichthyc and Aquiferous Resources Bureau studied the content of the legal decisions, as it may be seen in the statements made by this agency in the memorandum addressed to the National Sustainable Development Bureau: "*it should be mentioned that Decision No. 47618 issued by legal counsel regular service, expressly establishes that there is no hindrance for the application authority of the Oceanary Regulation to authorise the requested exportation*" (pages 675/676).

Finally, it may be supposed that the National Ichthyc and Aquiferous Resources Bureau has performed a detailed analysis of the report submitted by the "Bernardino Rivadavia" Argentine Natural Sciences Museum. The National Ichthyc and Aquiferous Resources Bureau requested the advice of the "Bernardino Rivadavia" Argentine Natural Sciences Museum about the request made by Mundo Marino S.A. (page 129). The "Bernardino

Rivadavia" Argentine Natural Sciences Museum, in page 135, expressed that *"...it would like, before issuing its opinion, to know the economic aspects of the agreement..."*. The National Ichthyc and Aquiferous Resources Bureau, in page 213, answers that *".... we have sent you all the documents filed by the Oceanary ..., I would appreciate your sending us your opinion on the biological and conservation matters you deem appropriate"*. Anyway, together with this answer, the National Ichthyc and Aquiferous Resources Bureau sent the filing made by Wild Earth Foundation which requested consultation about several matters to "Bernardino Rivadavia" Argentine Natural Sciences Museum.

The above statements clearly show that, before issuing Decision No. 88/02, the National Ichthyc and Aquiferous Resources Bureau also analysed the legal objections made by the "Bernardino Rivadavia" Argentine Natural Sciences Museum and by the Wild Earth Foundation.

III.a.3. Conclusions

The appealed resolution states that Decision No. 88/02 "*is, in the subscriber's opinion, a null act, under the terms of Section 14 of Law No. 19,549, since it lacks enough motivation and the decision adopted therein is contrary to the objections posed against the reproduction agreement entered into by Mundo Marino S.A., by prestigious institutions with proficiency in the matter which were specially consulted to advise the Environment and Sustainable Development Secretariat as regards the decision to be issued*".

From the analysis of the opinions issued by the institutions with proficiency in the matter (reviewed in Article III.a.1) we conclude that Decision No. 88/02 is only contrary to the decision issued by the "Bernardino Rivadavia" Argentine Natural Sciences Museum.

Therefore, the appealed resolution, when stating that the judgement included in Decision No. 88/02 is contrary to the objections made to the reproduction programme by consulted prestigious institutions, lacks fact support.

The appealed resolution continues saying that Decision No. 88/02 "*omitted to refute with reasonable arguments those objections, as well as those posed by ecological associations considered as parties in the court file, and limited itself to exposing, in a dogmatic way and consequently, unreasonably, that «this Bureau considers there is enough merit to approve the Reproduction Agreement »*".

Section III.a.2 herein quoted evidences of the attention paid by the National Ichthyc and Aquiferous Resources Bureau to objections posed by the "Bernardino Rivadavia" Argentine Natural Sciences Museum and by the Wild Earth Foundation. In fact, the National Ichthyc and Aquiferous Resources Bureau considered said objections, by studying their likelihood when dealing with technical issues and requesting legal analysis in the case of legal concerns. Likewise, it should be pointed out that the National

Ichthyc and Aquiferous Resources Bureau successively exchanged correspondence with governmental bodies in the United States of America with competence in the handling and care of marine mammals (NMFS and APHIS which is the American agency in charge of animal care, including transportation) to obtain information about the authorisation and operation of the receiver, background of said company, infrastructure technical characteristics, life supports at facilities, protection of United States regulations granted to Kshamenk orca, etc., all of which also contribute to evidence the diligence of the above-mentioned Bureau.

Consequently, the appealed resolution, when stating that Decision No. 88/02 omitted to refute with reasonable arguments the objections made by institutions with proficiency in the matter and by environmental associations considered to be parties in the court file, fails to admit true facts. Although Decision No. 88/02 does not include a reply to said objections in its text, it is true that the National Ichthyc and Aquiferous Resources Bureau has previously refuted them, as it appears in the court file.

Besides, before transferring the case to the Secretary of Environment and Sustainable Development, the Wild Earth Foundation filed an administrative recourse against Decision No. 88/02. This recourse was reviewed by the legal counsel of Wild Fauna Bureau (pages 856/859) and by the General Bureau of Legal Matters (pages 941/942), and none of these two judgements found any defect in Decision No. 88/02. Needless to say, should the irrationality of Decision No. 88/02 be such and so obvious, these judgements (or, as the case may be, the officers who may then look into the court file) should have posed objections on this regard.

The appealed resolution, when stating that Decision No. 88/02 lacks enough motivation and is dogmatic and unreasonable, also fails to adjust to the applicable law.

The Administrative Proceeding Law points out that one of the elements of the administrative act is motivation (Section 7, subsection e), thus establishing the generic obligation to found administrative acts. Motivation is the expression of reasons and circumstances of fact and law which have led to the act. In principle, motivation is concomitant of the act and it arises from its "legal bases", but this has no normative value.

In fact, previous motivation is admitted, if it arises from reports and judgements expressly mentioned in the act (CNFedContAdm, Room II, 09/23/93, case "Beamurguia", ED 156-113). This is applicable to the case under analysis every time Decision No. 88/02 quotes legal judgements (favourable to the execution of the agreement) and technical judgements (favourable to the execution of the agreement, except for opinion issued by Bernardino Rivadavia Argentine Natural Sciences Museum).

Besides, the Treasury Representation of the Nation has recorded that insufficient motivation allows to resort to, in order to interpret the act, prior records, because they shall be considered as a whole and not in isolation

since they are all part of a proceeding and, as steps of same procedure, are independent but at the same time correlated among themselves (PTN, Judgement 256/1991). Just like the quoted judgement, case law has stated that: "*lack of expressed motivation, in itself, is not enough to invalidate the disputed acts, provided the existence of motive or cause which justifies them can be drawn from the background and reports which have been assessed in order to issue them.*" (CNFedContAdm, Room IV, 28/02/95, case "Meererfeld"). Doctrine emerging from background allows the integration of motivation of Decision No. 88/02 with all procedural parts issued by the National Ichthyc and Aquiferous Resources Bureau previously (requests for reports, requests for the participation of the legal counsel service, reports submitted to the Sustainable Development National Bureau and judgement sent to the Wild Fauna and Flora Bureau).

After clarifying the defect concerning motivation, the description which the appealed resolution makes of Decision 88/02, calling it "dogmatic" and "unreasonable" is also discarded. Some examples of irrationality are contradiction, disproportion and absurdity (Gordillo, A.: "Administrative law treatise", 3rd Ed., Bs.As., Macchi, 1982, T. III). On the contrary, the study of conduct development followed by the National Ichthyc and Aquiferous Resources Bureau throughout all the steps of the court file allows to conclude that Decision No. 88/02 is a reasoned derivation of de facto and de jure background applicable to the case.

Summing up, the appealed resolution fails to adjust to facts (since it is inexact that Decision No. 88/02 is contrary to opinions issued by institutions with proficiency in the matter and that objections posed by said institutions and by organisations considered as parties in the court file have not been considered), and it also fails to adjust to applicable law (when it describes the decision as an act lacking motivation and being dogmatic and irrational when it is not so).

Therefore, revocation of Decision No. 88/02 by the appealed resolution should be invalidated, since it is a defective act which fails to base on facts or applicable law (Section 7 subsection "b" and Sections 14 and 17 of Administrative Proceeding Law).

In the hypothetical case the Minister considers the evidence appearing in the court file is not sufficient to constitute motivation of Decision No. 88/02, my principal hereby requests as evidence of its own party that the subscriber of said decision, Lic. Oscar H. Padín, former director of the then National Ichthyc and Aquiferous Resources Bureau, be requested to explain the reasons which led him to sign there is enough merit to approve the reproduction programme proposed by Mundo Marino S.A. for Kshamenk orca.

III.b. Denial of necessary authorisations to carry out the reproduction programme

Apart from revoking the reproduction programme approval, the appealed resolution decides to deny the other authorisations necessary to fulfil the reproduction programme proposed for Kshamenk orca.

One of the necessary authorisations to fulfil the reproduction programme is the CITES exportation authorisation requested by Section 4 of Law 22,344 and Section 14 of its Regulatory Decree (Decree 522/97). This authorisation is granted once the following requirements have been met: (i) a scientific expert from the exportation Country has stated the exportation will not harm the specie survival; (ii) an administrative authority of the exportation Country has verified that the animal was not obtained in violation of legislation in force in said Country concerning fauna and flora protection; and (iii) an administrative authority of the exportation Country has verified the live animal will be conditioned and transported in such a way risks of wounds, health damage or bad treatment are reduced to a minimum.

Another necessary authorisation is the one requested to leave the oceanary for exportation, demanded by provisions of Section 17 of Oceanary Regulation, which is granted once the following requirements have been met: (i) the oceanary should have been previously authorised to operate by the application authority of Oceanary Regulations; (ii) CITES documentation and customs office documentation shall be filed; and (iii) the animal's individual technical card shall be filed.

Although Mundo Marino S.A. meets all the requirements to obtain the CITES exportation authorisation and the authorisation for Kshamenk orca to leave the oceanary, the appealed resolution has decided to deny these authorisations basing on a number of arguments which have been listed above and which are hereinafter analysed separately.

III.b.1. Risks arising from Kshamenk orca transportation

In order to deny the remaining necessary authorisations, the appealed resolution points out, firstly, that the approval of the reproduction programme would imply taking a measure contrary to the main goal of the Oceanary Regulation which is the protection of marine mammals, since transportation of Kshamenk orca to its place of destination implies high risk to its life.

As it has already been explained, the National Ichthyc and Aquiferous Resources Bureau requested Mundo Marino S.A. and United States competent authorities, to provide information related to the conditions under which Kshamenk orca's transportation would be performed. Said conditions were analysed *in extenso* by the above-mentioned Bureau in the decision sent to the Wild Fauna and Flora Bureau which appears in pages 698/701, said analysis concludes that precautions and duration meet the requirements requested by applicable rules.

However, the appealed resolution, without carrying out any technical analysis whatsoever to support this assertion, states that the issuance of the

necessary authorisations to perform the reproduction programme would harm Kshamenk's health.

It should be said that the court file fails to mention any technical study which might support this assertion.

In fact, what was resolved about this issue by the appealed resolution is an exact copy of statements included in the draft resolution issued by the legal counsel of the Environment and Sustainable Development Secretariat appearing in pages 963/977. However, the General Bureau of Legal Matters of the Social Development Ministry, has expressed on this regard in its Decision No. 47618 (224/227) that "*...the risk implied in marine mammal transportation is not an obstacle for performing it, provided preservation and safety precautions set forth in the regulation are complied with (see Sections 38 to 40 of Oceanary Regulation). Needless to say, it is not the job of the legal counsel regular service to survey these requirements*". After issuing Decision No. 53914, when it assessed the draft resolution prepared by the legal counsel above-mentioned, in compliance with provisions of Section 7 subsection d) of the Administrative Proceeding Law, the General Bureau of Legal Matters has repeated that technical considerations are foreign to the legal service competence and has quoted several decisions by the Treasury Representation of the Nation to support this statement (Decision No. 53914, chapter II, pages 980/981). We should conclude then, that the draft resolution appearing in pages 963/977 is not a valid motivation concerning this issue.

The only negative background of technical nature concerning this issue is, once again, the report issued by "Bernardino Rivadavia" Argentine Natural Sciences Museum. Said report comprises a very brief analysis (item "H") related to the risk run by the animal when being transported. This fact shall not be considered as due motivation either, since the same Museum states that " *it is impossible to answer this point precisely, since there is lack of information on this regard and the National Marine Fisheries Services itself, in its writing to Six Flags company requests more details about transportation methods*" (pages 421). Consequently enough, the report prepared by "Bernardino Rivadavia" Argentine Natural Sciences Museum shall not be considered as background which provides enough motivation to the appealed resolution either.

My principal considers that the analysis carried out by the National Ichthyc and Aquiferous Resources Bureau on the transportation conditions in the decision of pages 698/701 is accurate and complete to refute the statements of the appealed resolution about the transportation of the animal. Besides, the opinion of the National Ichthyc and Aquiferous Resources Bureau on this regard deserves special consideration, since it is a technical judgement issued by the Oceanary Regulation application authority with proved experience in cetacean handling.

Nevertheless, in order to lessen any possible risk to the animal's health derived from its transportation, apart from the existing information in pages

53/76 y 924, my principal hereby includes as evidence of its party, the report made by Dr. Jim Antrim, who supervises the team that will be in charge of Kshamenk orca trip from Argentina to the United States of America.

Dr. Jim Antrim is the expert with more experience all over the world in cetacean transportation. He has published several articles in scientific magazines, is co-author of the book "*Marine Mammal Transport*" (Ed. 2002, published together with Dr. Mc Bain), is member of the Society for Marine Mammals, was Secretary and Treasurer of the International Association of Aquatic Animal Medicine, Director of Animal Transportation Association and President of Alliance of Marine Mammal Parks and Aquariums.

Dr. Jim Antrim has performed near one hundred successful relocations of orcas, including the supervision of the recent transportation of the other orca involved in the reproduction programme proposed by Mundo Marino S.A. (female orca Shouka, which was transported in May 2002 from France to the United States of America), which was carried out with no inconveniences whatsoever as it is documented in a film which in due time my principal filed in video to the Environment and Sustainable Development Secretariat.

In the attached report, Dr. Jim Antrim declares that in the many relocations he participated "*there were no deaths, significant traumatism or diseases in any of the animals due to transportation*".

Therefore, we conclude that the appealed resolution, when it denies authorisations basing on the risk implied in transportation, lacks motivation and cause (Section 7, subsection "b" and "e" of Administrative Proceeding Law) and shall be revoked by the Ministry (Sections 14 and 17 of same legislative rule).

III.b.2. Description of the reproduction programme as a sudden and isolated measure with no coherent background

Another reason on which the appealed resolution bases to deny the necessary authorisation is that "*the reproduction agreement proposed is not a developed stage of a reproduction organic programme carried out by the institution concerned, but it seems to be an isolated and sudden measure with no coherent background*".

This assertion is not clear, but it reveals that in order to reach this conclusion, the appealed resolution must have totally ignored all the steps taken by Mundo Marino S.A. which appear in the court file, specially contents of Article 1- *Project Background* of the writing that gave rise to this proceeding (page 3), which is hereinafter quoted:
"Like any modern Zoo involved in species research and conservation, Mundo Marino's goal is to obtain self-sustaining groups of species dwelling in its premises. This is a basic objective which bases on Reproduction and

Research programmes, allows the continuity of institutions and their research and conservation plans throughout time.
The couple of orcas dwelling in Mundo Marino, composed by Kshamenk and Belén, was part for many years of the reproduction and research programmes which have been developed with the different animal species of the oceanary.
Throughout the years, said programmes have proved successful with sea lions, several birds, penguins and dolphins, so much so that, as an example, we can mention that this year the sixth birth of a dolphin has taken place and another female is pregnant.
This successful results also comprehended the orca couple, because when reaching its reproductive maturity, the female animal conceived a foetus which developed normally but died before delivery, something which is not rare in primiparous.
Female pregnancy proved the couple's fertility and the near certainty that in the future a social group of orcas would be formed. This is very important for the development of the individuals of this species, since they are very sociable.
Unfortunately, death of Belen female orca, which happened some months later, had three important consequences:

1) *The possibility to continue with the planned Reproduction Programme vanished definitely.*
2) *The male lost its specie partner, to which it was perfectly adapted.*
3) *The institution had to restate its strategy to obtain a self-sustainable group of this specie"*

The reproduction agreement subscribed concerning Kshamenk orca is a measure adopted to continue with the prior reproduction programme which was frustrated in the past. The background of that reproduction programme is in the National Ichthyc and Aquiferous Resources Bureau, as well as the information about the project for a significant enlargement of infrastructure and life supports. In fact, in 1997 a project to adapt facilities to the needs of the reproduction programme being carried out and to host a family of orcas was developed. The project had two stages: a significant orca complex which would take three years to be built and an intermediate pool which may host the female and its first offspring. Both facilities were started at the same time, and the work was surveyed by inspectors who periodically carried out inspection of the premises. The intermediate pool was completed in one year and was authorised by the competent authorities. Unfortunately, when the female orca died, the larger complex building had to be stopped.

In view of this, Mundo Marino S.A. performed a thorough analysis of available alternatives in order to solve the serious loneliness problem the orca was suffering and the self-sustainability of the species, concluding that the only possible alternative was to lend the animal to an international reproduction programme, because since the death of the female, the animal's life quality had drastically worsened, and for the animal's welfare its loneliness should not be prolonged because it may have important consequences over its health and life expectancy. It is well known that it is

the obligation of Mundo Marino S.A. to secure the life and welfare of Kshamenk orca and also that the animals from this species dwelling in the premises come from their own self-sustaining processes.

Finally, Mundo Marino S.A. managed to enter with Six Flags Theme Parks Inc., -a company with corporate and scientific prestige, with technology and specialised knowledge on cetacean care – into an agreement to integrate the animal to a reproduction programme which will be developed by said American company and which implies the lending of Kshamenk orca and a female specimen of *Orcinus orca* identified as Shouka coming from "Marineland" premises, owned by Marineland S.A., in Antibes, France.

Many measures have been taken to start this reproduction programme. Competent authorities in France authorised Marineland S.A. to transport Shouka orca from France to the United States of America for reproductive purposes. Likewise, Six Flags Theme Parks Inc. obtained the authorisation to get the animal into the country by the competent authorities in the United States. Shouka arrived at the receiver's premises in May 2002, and since that date is waiting for Kshamenk to start the reproduction programme (it is alone, with no other species specimen).

As regards Kshamenk, in May 2002 Six Flags Theme Parks Inc. obtained from the United States of America, the authorisation for the animal to get into the country and stay temporarily there. In fact, the competent agency in that country, the NMFS, issued authorisation No. 1001-1656-00 which allows Six Flags Theme Parks Inc. to enter, lodge and exhibit to the public Kshamenk orca, for purposes of the reproduction programme concerned. On the other hand, in February of 2003 Mundo Marino S.A. obtained from the competent authorities of the Province of Buenos Aires the necessary transit special permit for the transfer, exit and transport of Kshamenk from San Clemente del Tuyú up to Ezeiza International Airport. Now national authorities have to issue the necessary authorisations to transport Kshamenk to the United States.

Besides in pages 524/534 of these records, there is specific information explaining the development and the conditions under which the reproduction programme will be developed. It has also been added in pages 218/219 y 698/701 the analysis performed by the National Ichthyc and Aquiferous Resources Bureau about Six Flags Theme Parks Inc., which would be the receiver institution of Kshamenk and which would be in charge of performing the reproduction programme.

To sum up: (i) existence of a prior reproduction programme involving Kshamenk orca and developed under the supervision of the National Ichthyc and Aquiferous Resources Bureau; (ii) completion of the first stage of the appropriate infrastructure project for the species reproduction programme, (iii) entering into an agreement with Six Flags Theme Parks Inc. to integrate Kshamenk orca to a reproduction programme; (iv) exportation of Shouka orca from France to the United States of America to integrate it to the same programme, which has already taken place; (v) authorisations already issued

concerning Kshamenk orca (transit special permit of the Province of Buenos Aires and the authorisation issued by the competent authorities of the United States of America); (vi) material supplied by Mundo Marino S.A. related to the development of its reproduction programme; and (vii) analysis of conditions of receiver institution duly performed by the National Ichthyc and Aquiferous Resources Bureau, provide enough serious context to Mundo Marino S.A.'s proposal and evidence the existence of an organic reproduction programme, with which the nearly insulting description made by the appealed resolution is refuted when saying that the reproduction agreement "*seems to be and isolated and sudden measure, with no background or context*". You will understand that, should the reproduction agreement have the characteristics described by the appealed resolution, the competent authorities of the United States of America and of the Province of Buenos Aires would be under-estimated.

We should finally say that what was resolved on this issue by the appealed resolution also lacks other motivation than what has been expressed in the draft resolution issued by the legal counsel of the Environment and Sustainable Development Secretariat in pages 963/977 and which has already been mentioned. Therefore, considerations made by the General Bureau of Legal Matters of the Ministry of Social Development about the technical considerations being foreign to the legal service competition, also apply here. (Decision No. 53914, chapter II, pages 980/981).

Consequently, we conclude that the appealed resolution, when denying the authorisations basing on the above-analysed argument, lacks motivation and cause (Section 7, subsections "b" and "e" of Administrative Proceeding Law), for which it deserves to be revoked (Sections 14 and 17 of same legislative rule).

III.b.3. Possibility of using artificial reproduction techniques

Among arguments stated by the appealed resolution to deny the necessary authorisations to carry out the reproduction programme, there is one related to the possibility of using artificial reproduction techniques. In this sense, the appealed resolution says "*the existence of proved and safe procedures which avoid the need to transport animals to obtain a successful female fecundation, like assisted reproduction from sperm extracted by electric ejaculation and carried in liquid nitrogen samples*".

Once again, this argument repeats the statements of the draft resolution issued by the legal counsel of the Environment and Sustainable Development Secretariat of pages 963/977, therefore my principal deems appropriate here the considerations made concerning the fact legal advisors are not entitled to assess technical matters.

Once again, the draft of the legal counsel expresses the opinion of "Bernardino Rivadavia" Argentine Natural Sciences Museum, which in item "J" of the report states "*...we deem there are assisted reproduction methods which would have allowed the extraction of sperm of Kshamenk in San*

Clemente del Tuyú by electric ejaculation method and the transportation of samples in Liquid Nitrogen by plane to the United States, where said sperm could have been used to artificially fecundate other available female orcas" (page 422).

My principal has not doubts about the exploration of artificial reproduction techniques, which in fact is foreseen during Kshamenk stay in the United States of America. However, one of the main objectives of Mundo Marino S.A.'s reproduction programme is to improve Kshamenk's life quality by means of the company of a specimen of its same species, thus preventing that the loneliness problem remains unsolved for the rest of its life.

However, my principal deems it convenient to state that there is not a standardised technique on cetacean artificial reproduction yet. This is clearly explained in the report made by Dr. Bastida, and is implied in the decision issued by the National Patagonic Centre, which points out that assisted reproduction "*should be explored*".

It must be said that the fact in the United States of America incipient experiences in the matter are being developed, does not mean that in our country a programme for collection of sperm and/or artificial insemination of cetaceans could be performed in the short or mid term. Needless to say, both public and private sectors in the country are undergoing a severe economic-financial crises. In view of the general shortage of food and medicines, it would be absurd and against all ethics to assign funds to such a programme.

My principal also thinks it should be mentioned that the technique of insemination from sperm extracted by electric ejaculation and subsequent carriage in liquid nitrogen samples – mentioned in the appealed resolution – should be totally discarded, since it is a specially bloody method, inapplicable to this species and which has never been used in orcas.

To carry out the electric ejaculation, a specific device is used (electric ejaculator) which consists in a stiff tube, with electrodes in one end and a connection – through wires – to an electric supply in the other (similar to electric shock torture). For example, in the electric ejaculator used for bulls –whose physical size is 4 or 5 times smaller than an adult orca – the conductor tube is approximately 75 cm. long and 4 cm diameter. This device must be introduced through the rectum up to the beginning of the cavernous bodies, where the prostate and vesicular glands are located, and must be placed against the ejaculation sensitive centres to then produce the electric power discharge which causes the necessary physical reactions for the ejaculation.

In the case of orcas, there are no efficient anatomical devices due to the different position and size of internal organs and the parameter range to be used is unknown (level of excitation current, frequency, stimulation time, etcetera), all of which may cause serious mistakes such as the filling of the cavernous bodies before flexure extension, the lack of relaxation of

retractive muscles, the incomplete mixture of gland fluids, etcetera. Besides, the existing alternatives in order to apply the electric ejaculation method on an orca are the following: (i) make the animal sleep by means of general anaesthetic, which cetacean experts consider it is a non-recommendable medical operation, since there is no safe and viable technique which avoids respiratory stand-still and subsequent death of the animal (ii) immobilise the animal tightly to avoid its violent movement when feeling pain with the device still inside its body, which might cause severe internal injuries. The second alternative is very difficult to put into practice, because it is nearly impossible to immobilise the animal inside the pool and the use of electric power in water implies significant risk. Therefore, it would be necessary to take the orca out of the pool and place it on stable ground, for which a large size crane would be needed. Afterwards, the animal should be placed in such a way that the ventral zone is discovered in order to expose penis and place it inside a sterile tube. The most difficult task would be, no doubt, to find and use a prehensile fastening method to fasten an animal which weighs approximately 3,500 kg and is 7 mts long without hurting it when it tries to move at the time the rod is introduced and when it receives the electric ejaculator discharge.

From the description above we infer that the electric ejaculation is an extremely invasive method. Those who have practical experience in handling cetaceans, like my principal, and specially in the case of Kshamenk orca, know that electric ejaculation is non-feasible method which damages the animal welfare. In fact, Mundo Marino S.A. could never implement this technique with Kshamenk orca, which is used to obediently answering all the requests of human beings because it "knows" they will not cause it any damage or pain. It is impossible to imagine how much stress such an aggressive technique like electric ejaculation would cause the animal.

Unfortunately, the draft fails to include the opinion issued by the CONICET National Patagonic Centre, which in section 4 states the following concerning artificial insemination in general: "*Development of this alternative would benefit the orca's reproduction at present, but it would not solve the loneliness problem*" (pages 231/232).

To sum up, the appealed resolution, when it decides to deny authorisations in view of the possibility of using other techniques such as electric ejaculation, which it describes as "*proved and safe procedures*" which avoid animal relocation, shows it has defects of motivation (since it omits considering that the implementation of said techniques fails to solve the loneliness problem of Kshamenk) and in cause (because it suggests a method which is impossible to implement in the specific case of Kshamenk orca). These defects support the request for revocation of the appealed resolution under the terms of Section 7, subsections "b" and "e" of Administrative Proceeding Law.

III.b.4. Specimen rational exploitation

The appealed resolution states that the approval of the reproduction programme would be contrary to the reasonable exploitation of the animal, which should essentially benefit the Argentine community in adequate environmental and ecological educational and research programmes, developed within the scope of the Oceanary Regulation.

My principal does not agree with the idea of Kshamenk's stay in Argentina being a rational exploitation of the specimen; Kshamenk's stay in Argentina would imply leaving the animal in solitude for the rest of its life. My principal considers that rational exploitation would be linked to an improvement of the animal's life quality and welfare, and really believes the completion of the proposed reproduction programmed would contribute to that improvement.

In this particular case the reproduction programme would also provide an additional scientific and educational benefit. The agreement involves the integrated and joint action of Argentine and foreign scientists to carry out an international programme of natural and assisted reproduction. It means a significant technological and scientific exchange which, no doubt, it is of national interest, since it not only benefits the oceanary but all those who may take advantage from this exchange and transfer of technology and knowledge for the community through the work of professionals, technicians and students of tertiary level and professional specialisation courses which are annually given by Mundo Marino S.A. and the subjects for the School of Veterinary of the Universidad Nacional de La Plata and Universidad del Salvador. It would allow Mundo Marino to start research in the field of assisted reproduction, which would otherwise be inaccessible. It is clear then that the Argentine community would get educational and research benefits even when the animal is not physically inside the country. It could even be said that this contribution would be more important and specific than its stay in the country. Needless to say, with procreation of descendants from its species, Kshamenk would contribute to perpetuate the species for the benefit and exploitation of the Argentine community throughout time, because otherwise, when Kshamenk dies, the community will have no other specimen from this species for education and research.

In this sense, it should be considered that the development of the reproduction programme would provide the following benefits: (i) it would solve the serious loneliness problem of Kshamenk orca by integrating it to specimens of its same species, providing it the possibility of developing a normal behaviour life and building a social group, which is of vital importance for a species which is as sociable as *Orcinus orca*; (ii) it would allow Kshamenk to live together with a female and develop reproductive behaviour which is part of the normal and healthy life of an animal; (iii) it would mean a significant improvement to Kshamenk's life quality, which would also improve its life expectancy; (iv) it would allow Mundo Marino S.A. to comply with the requirements of developing reproduction programmes imposed by the Oceanary Regulation and by Decree 3237/95 of the Province of Buenos Aires (oceanary provincial regulation) and the requirements that research programmes should specifically apply to

improving the stay and survival of animals in captivity –Section 6 of Decree 3237/95 mentioned above -; (v) it would allow Mundo Marino S.A. to have animals from *Orcinus orca,* coming from its own self-sustaining procedures; and (vi) it would allow an Argentine company to obtain first line scientific and technical knowledge about natural and artificial reproduction, which would obviously become a benefit, not only for Mundo Marino S.A. but for its co-operators and for those who in the future may participate in the educational courses and programmes.

Consequently, the assertion made by the appealed resolution is unreasonable in the sense that Kshamenk's stay in Argentina means rational exploitation of the specimen. This irrationality is a defect in the subject matter of the appealed resolution, which justifies its revocation (Section 7, subsection "c" of Administrative Proceeding Law).

III.b.5. Conclusions

From statements made throughout Chapter III.b. herein, it is clear that the appealed resolution mentions a series of arguments which –for different reasons – are invalid to deny the authorisations necessary to carry out the reproduction programme proposed by Mundo Marino S.A.

The lack of validity of those arguments justifies the revocation of the denial of the authorisations necessary to perform the reproduction programme by the Minister, who, after invalidating the appealed resolution should dictate the issuance of said authorisations.

III.c. Considerations related to the ownership of Kshamenk orca and legitimisation of my principal

Finally, the appealed resolution states that, in view of the denial of authorisations, Mundo Marino S.A. shall not invoke damage to its property right over the animal, since "*when adhering to the system of said regulation, the acts of the interested party have meant acceptance of the character of animal holder, which is not compatible with that of owner, because the Regulation, in the case of premises which lodge marine mammals, apart from establishing the principle of stay in oceanaries, of specimens which have beached in the shores – as it is the case of Kshamenk-, which is allowed for rehabilitation purposes in order to subsequently free them, clearly defines that the stay of an animal, whether temporary or definite should liberation not be possible, is mere possession, not ownership (see Sections 19 and 20, mentioned regulation.)*".

The appealed resolution also quotes the content of the draft prepared by the legal counsel of the Environment and Sustainable Development Secretariat of pages 963/977. In decision No. 53914 appearing in pages 980/981, the General Bureau of Legal Matters fails to analyse this item of the draft. In fact, this decision is issued in connection with Decision No. 88/02, with the technical issues and with the competition of the Environment and Sustainable Development Secretary for said act.

Fortunately, the General Bureau of Legal Matters analysed in a previous decision the issue concerning ownership of the orca and the application of the provisions of the Oceanary Regulation to the incorporation of the animal to Mundo Marino S.A premises. In fact, in decision No. 48343 (pages 535/541), the legal service stated the following: "*The orca concerned... at the time of being introduced in the oceanary of Mundo Marino Sociedad Anónima was, legally, a res nullius, in the terms of Section 2343 of the Civil Code. Besides, at that time, 1992, there were no fishing regulations– or, better said, of hunting or capture – which would have taken it from the private law traffic... To sum up: due to the fact it got into the oceanary before the coming into force of the Regulation for Premises which lodge Marine Mammals, Exhibit I, Resolution of the Natural Resources and Human Environment Secretariat No. 351 of 1995, the orca which dwells in Mundo Marino Sociedad Anónima premises is private property of the latter. This has relevant consequences. Firstly, there are no legal hindrances for its exportation or for its sale. Of course, always under operative and other conditions, and meeting the other requirements which the oceanary regulation requests for relocating outside the oceanary. If, as requested by the Wild Earth Foundation, animal exportation or sale was prohibited on grounds of public interest which request the stay in the Argentine Republic, strictly speaking, since the National Constitution prohibits confiscation of property except for sentence based on law or expropriation, the animal should be expropriated and Mundo Marino Sociedad Anónima indemnified. However, nothing hinders the authorisation to export the animal or the authorisation for the reproduction agreement which requests it, since the interested party has not met the requirements requested by the oceanary regulation*".

Basing on a decision whose content has been partially transcribed herein, it may be said that the appealed resolution disagrees with the opinion of the General Bureau of Legal Matters on this point.

Apart from the disagreement with the opinion of the legal service, whose terms are not shared by my principal, the appealed resolution fails to adjust to law. In fact, statements in the appealed resolution suggest Kshamenk orca is a state-owned asset.

Contrary to this statement, it should be remembered that one of the essential elements for the existence of public property in the Province of Buenos Aires on Kshamenk orca is the legal or regulatory element. Marienhoff points out that: "...*Public property is not a creation of Nature; there is no natural public property or by natural law. Its existence depends on the legislator's will. With no law acting as basis, no good or thing will have the character of owned property. That is why one of the elements of the concept of public property is legislation or regulation... There are no public goods by nature, nor by natural right; it is the State the one which establishes the public character of things... Being no public assets by nature, but only by means of legal declaration thereof, the government act which establishes domain over property – whatever its origin or type -, always "attributes"*

public character to a good, and never merely declares it..." (Administrative Law Treatise, Buenos Aires, 1998, t.V, pages 140/143). In this way, for Kshamenk orca to be public property there should have been, at the time of its beaching, a rule disposing so, which is not the case.

The regulation element mentioned above cannot be fulfilled by mere interpretation of the behaviour of a party, such as adherence to the system of the Oceanary Regulation, least of all when said system fails to include an express provision in that sense.

The regulation element cannot be replaced by subsequent rules (such as for example, the Oceanary Regulation), because the effect of the government act which establishes ownership of a good is attributive –and not declarative – it cannot be validly asserted that a subsequent law grants such character to the good, least of all that it disposes of it with no indemnification to the owner of the good which becomes public property. The General Bureau of Legal Matters has expressly referred to the impossibility of applying the Oceanary Regulation to the inclusion of Kshamenk to Mundo Marino S.A. premises, stating that: "*although the Regulation for premises which lodge marine mammals... in its Section 19 makes express reserve of the power of the authority to decide on the freeing of animals, and also to allow the temporary or definite stay of the animal in the oceanary. Admission of definite possession is equivalent to removing any obstacle for private appropriation of the animal. Anyhow, these powers of the oceanary regulation application authority, which condition private appropriation of animals which have naturally beached and have been saved, shall not be retroactively applied to the orca which Mundo Marino S.A. already owned at the time the referenced regulation came into force*".

Anyway, it should be remembered that the performance of the reproduction programme will not imply any modification to the ownership status of Kshamenk orca –whatever said status may be -, since the animal is transported to the United States of America under a lending agreement In fact, applicable regulations admit exportation of animals from *Orcinus orca* species, imposing certain conditions to approval thereof, among which there is no condition concerning ownership of said cetaceans. Therefore, clarification of ownership of Kshamenk orca is not relevant herein.

To support this statement, we should quote the Bureau of Legal Matters, which in Decision No. 47618 (pages 224/227) states as follows "*If the Application Authority has scientific and political reasons concerning reproduction programmes, on which it bases the approval of the reproduction programme involved, this legal counsel regular service should point out that, despite the filing made by the Wild Earth Foundation, there are no legal obstacles for its approval*" and that "*the clauses comprised in the agreement entered into by Mundo Marino oceanary and its American counterpart, which make reference to the ownership of the concerned male orca by the oceanary and of any of the eventual offsprings, should be deemed irrelevant for purposes of approving the reproduction programme...*".

It is also important to take into account the statements of the Ministry of Agriculture and Production of the Province of Buenos Aires in the whereas clauses of Decision No. 33/03 which order the issuance of the transit special permit necessary to carry out transportation of Kshamenk orca (copy of which is attached to page 950 herein): "*...it is not decisive, for purposes of granting the requested permission, the question of ownership of the concerned orca*".

Besides, apart from the issue concerning ownership status of Kshamenk, it is clear that the appealed resolution acknowledges my principal is, at least, legitimate holder of the animal. In fact, my principal has rescued, rehabilitated and lodged Kshamenk under direct supervision of the competent authorities since 1992, supplying it food and multiple care.

This circumstance, together with the fact the Supreme Court of Justice of the Nation has stated that "*the term property when used in Sections 14 and 17 of the Constitution... comprises... all appreciable interest an individual may have apart from itself, its life and freedom. Any right with known value acknowledged as such by law, whether arising in private law relationships or born in administrative acts (private or public subjective rights) under the condition the holder of the right has an action against anyone who might interrupt its exercise, even if it is the State itself, is comprised within the constitutional concept of property...*", (Sentences 145:327), evidences that the appealed resolution, when denying the necessary authorisations to complete the reproduction programme proposed for Kshamenk orca, damages my principal's right to property.

In fact, my party does not understand why the appealed resolution states that "*...Mundo Marino S.A. shall not invoke a right of property to the animal, with the consequent use and exercise of said right, which may be damaged by a decision of the Environment and Sustained Development Secretariat to deny the request for approval of the concerned reproduction agreement and authorisation to export specimen*". Mundo Marino S.A. has a subjective right which the appealed resolution damages and has legitimate right to appeal that decision, which may be described as a right to property and this cannot be matter of discussion, particularly when legitimisation in environmental matters has been significantly enhanced with the Amendment to the National Constitution of 1994 (Sections 41 and 43).

Therefore, the appealed resolution also lacks cause in this point, since it has not support in applicable law, for which it should be revoked under the terms of Section 7 subsection b) of Administrative Proceeding Law.

IV. Evidence

My principal offers the following evidence of its party:

- Exhibit I: copy of article about Kshamenk orca published in Fundación Vida Silvestre magazine in October 2002

- Exhibit II: electronic message recently circulated by Wild Earth Foundation

- Exhibit III: photographs of injuries suffered by the orca when it was found after its beaching

- Exhibit IV: (i) copy of the article "*Enclose Willy*" published by the New York Times and reproduced by "VIVA" magazine edited by Clarín newspaper; (ii) copy of news dated 4th of September of 2002 in La Nación newspaper *entitled "Keiko chooses love instead of freedom*"; (iii) printed copy of Internet own page of the Environment and Sustainable Development Secretariat which reproduces the article published by "La Nación" newspaper.

- Exhibit V: copy of report by Dr. Jim Antrim, who supervises the work team which was in charge of transporting Shouka orca from France to United States and who will be in charge of the trip of Kshamenk orca from Argentina to the United States of America.

V. Federal case reserve

My principal hereby reserves the right to appeal to the Supreme Court of Justice of the Nation through the steps set forth in Section 14 of Law 48, since matters of federal character are involved, like its right to export goods (Section 75, subsection 1 and 13 of the National Constitution) and the construction of rules bearing the same character, such as Law 22,344 which incorporates to Argentine legislation the CITES Convention, and Resolution 351/95 which approves the questions of law which regulate matters concerning marine mammals. Also due to the fact that in the court files the constitutional guaranties of property, of due legal proceeding and of rationality are compromised (Sections 17, 18 and 28 of the National Constitution).

VI. Procedural action requested of court

In view of statements above, my principal hereby requests:

1. This appeal to higher administrative court be filed, under the terms of Sections 89 to 92 of Decree 1759/72 regulatory of Administrative Proceeding Law, against Resolution 289/03 dated 24th of march of 2003 issued by the Secretary in charge of the Environment and Sustainable Development Secretariat of the Nation.

2. Due to reasons set forth in Chapter III herein, revoke all parts of the appealed resolution and order issuance of authorisations necessary to

perform the reproduction programme, proposal of which gave rise to these records.

Sincerely,

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

MAY 13 2003

G. William Hughes
Zoological Director
Funtime, Inc.
(c/o Six Flags Worlds of Adventure)
1060 North Aurora Road
Aurora, OH 44202

Dear Mr. Hughes:

Enclosed is Amendment No. 1 to Permit No. 1004-1656-00, which extends the expiration date of the Permit from May 16, 2003, to May 16, 2004, to import into the United States one male killer whale (Orcinus orca) from Mundo Marino, Buenos Aires, Argentina, to Six Flags Worlds of Adventure in Aurora, Ohio. The amended section appears in **bold typeface**. The Terms and Conditions of Permit No. 1004-1656-00 remain in force and effect. Please attach this amendment (1004-1656-01) to Permit No. 1004-1656-00 as an addendum.

Specifically, Condition B.1.b. was changed to extend the import authority until May 16, 2004. Please contact Jennifer Skidmore or Amy Sloan (301/713-2289) if you have questions regarding this amendment.

Sincerely,

Stephen L. Leathery
Chief, Permits, Conservation and
Education Division
Office of Protected Resources

Enclosure

G:\Pr1\Active Permits\Public Display\Six Flags (1004-1656)\1004-1656-01\1004-1656-01_extension.wpd
bcc: chron, file 1004-1656, GCF-Hytrek
J.Skidmore drafted: 5/5/03; final: 5/12/03

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

Permit No. 1004-1656-**01**
Expires: **May 16, 2004**

PUBLIC DISPLAY PERMIT NO. 1004-1656
Amendment No. 1

Authorization

Funtime, Inc. d/b/a Six Flags Worlds of Adventure, 1060 North Aurora Road, Aurora, Ohio, is hereby authorized to import into the United States two killer whales (Orcinus orca), one adult female from Marineland S.A., Antibes, France, and one adult male from Mundo Marino, Buenos Aires, Argentina, specified below for public display purposes, as described in the application and subject to the provisions of the Marine Mammal Protection Act of 1972, as amended (MMPA; U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and the Conditions hereinafter set out.

Section B.1.b. is changed to read:

b. The authority to import the animals authorized herein shall extend from the date of issuance through **May 16, 2004**.

This minor amendment becomes effective upon signature by the Director.

Date: May 13, 2003

Donna Wieting

Laurie K. Allen
Acting Director
Office of Protected Resources
National Marine Fisheries Service

Printed on Recycled Paper

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

MAY 13 2003

MEMORANDUM FOR: F/PR - Laurie K. Allen

FROM: F/PR1 - Stephen L. Leathery

SUBJECT: Report on the Application for an Amendment to Public Display Permit No.1004-1656-00, submitted by Funtime, Inc. d/b/a Six Flags Worlds of Adventure: **Recommendation for Issuance**

Abstract

Funtime, Inc. d/b/a Six Flags Worlds of Adventure requests an amendment to public display Permit No.1004-1656-00. Permit No. 1004-1656 authorizes the importation of two killer whales (Orcinus orca), one adult female from Marineland S.A., Antibes, France and one adult male from Mundo Marino, Buenos Aires, Argentina, to Six Flags Worlds of Adventure in Aurora, Ohio. The permit holder requests authorization to extend the permit for one year.

Chronology

April 16, 2003	Amendment request received
April 22, 2003	Additional information requested from applicant
April 28, 2003	Additional information received from applicant

National Environmental Policy Act: Public display permits are, in general, categorically excluded from the requirement to prepare an Environmental Assessment or Environmental Impact Statement (NOAA Administrative Order Series 216-6, May 20, 1999) since, as a class, they do not have a significant effect on the human environment. This amendment request is for the extension of the permit for twelve months. The number and species requested is not changing, nor is the manner or location in which the animal will be imported. NMFS, therefore, concludes that consistent with applicable criteria, issuance of the requested amendment, as conditioned, is categorically excluded from the requirement to conduct further NEPA analysis.

RECOMMENDATION

The proposed request does not extend the duration of the permit beyond twelve months and, as such, meets the definition of a "minor amendment" as described in 50 CFR Sections 216.39 (a)(1)(iv) and 216.39 (a)(2). Based on information that the applicant provided in its request for an extension, my office requested from the applicant additional information regarding proceedings in Argentina related to the export of the adult male from Argentina. We requested this information to determine whether those proceedings affected the findings and conclusions made in issuance of the permit, especially those regarding the legality and humaneness of the original take in Argentina. We have reviewed the additional information provided by the applicant and determined that it does not affect the findings and conclusions made in issuance of the permit. Moreover, this extension would not change any other permit conditions, including the condition that the applicant must obtain the required CITES permit prior to importation. For these reasons, I recommend that you sign the amendment request.

cc: Stuckey, Sloan

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MARINE MAMMAL DATA SHEET

NOAA Animal ID NOA0008002

Form Approved by OMB No 0648-0084
Expires 12-31-2019

I. Animal-Specific:

NOAA Identification No.: NOA0008002

Common Name: Killer Whale; Orca **Scientific Name:** Orcinus orca

Sex: FEMALE

Date of birth: 02-25-1993 **Birth Date Certainty:** ACTUAL

Captive Origin: BIRTH

Date of original captivity: 02-25-1993

Permit No.: **Collector:**

Geographic Location: Lat: : ' '' / Lon: : ' '' **Geographic Name:**

II. Holder/Facility-Specific:

Holder (Person or other Entity With Custody of the Marine Mammal): Marineland S.A. (in France)

Facility (if different from Holder): Sea World of California

Date assumed custody: 02-25-1993

Date arrived at Facility: 08-20-2012

City/State/Zip of Facility (include Country for foreign facilities): San Diego, CA 92109 US

Animal Identification No. (assigned by facility): SWC-OO-1226

Animal Name (assigned by facility):

Purpose(s): Public Display

III. Disposition:

Death Date:

Death Cause:

Death Cause Comment:

Release Date: **Permit No.:** **OR** ☐ **Unauthorized release/escape (reintroduction)**

Geographic Location: Lat: : ' '' / Lon: : ' '' **Geographic Name:**

Tag number or description of other identifying markings:

IV. Animal Historical Transfer/Transports:

Activity Date: **Type of Activity:** TRANSPORT

From Facility: Six Flags Discovery Kingdom **To Facility:** Sea World of California **Start Date:** 08-20-2012

Activity Date: **Type of Activity:** TRANSPORT

From Facility: Six Flags Marine World **To Facility:** Six Flags Discovery Kingdom **Start Date:** 07-31-2007

IV. Animal Historical Transfer/Transports:

Activity Date:		**Type of Activity:**	TRANSPORT		
From Facility:	Six Flags Worlds of Adventure	**To Facility:**	Six Flags Marine World	**Start Date:**	04-19-2004
Activity Date:		**Type of Activity:**	TRANSPORT		
From Facility:	Marineland S.A. (in France)	**To Facility:**	Six Flags Worlds of Adventure	**Start Date:**	05-20-2002

Marine Mammal Data Sheet (MMDS)
NOTES:
The Marine Mammal Protection Act of 1972, as amended (MMPA) (16 U.S.C. 1361 et seq.) requires that persons holding marine mammals submit certain information to the National Marine Fisheries Service (NMFS). The MMPA requires that NMFS maintain an inventory of all marine mammals held for public display purposes and scientific research/enhancement (i.e., all marine mammals held captive except for those in captivity before December 21, 1972). In addition, the MMPA requires that NMFS be given advance notice 15 days prior to the transfer/transport of any marine mammal. To ensure compliance with these and related MMPA requirements, NMFS recommends that persons holding marine mammals in captivity use this Marine Mammal Data Sheet (MMDS) to submit inventory information regarding their captive marine mammals to NMFS. Use of this form will ensure that the MMPA required information is submitted in a consistent manner and that the NMFS marine mammal inventory is accurate and up-to-date.
Marine Mammal Data Sheets should be used when submitting information to NMFS in compliance with MMPA requirements applicable to persons holding marine mammals, including notifications of any additions/changes to your marine mammal inventory due to:
o Birth, Death, Transfer/Transport
o Retention or Transfer of Rehabilitated Beached and Stranded Marine Mammals (Authorization or Permit)
o Wild Capture, Import, Reintroduction to the Wild, including release or escape (Permit)
o Other (Corrections, etc.)

The animal-specific information in Section II will not change, whereas data in Sections I, III and/or IV will change with transfers/transports (changes of custody and/or facility/location). In accordance with MMPA requirements, NMFS requests notification of any change in custody or facility/location, including captive births and deaths. A copy of the Marine Mammal Inventory Report Summary (MMIRS) may be provided periodically and may be requested at any time by contacting the Permits, Conservation and Education Division at the address listed below.

All permit documentation including reports and inventory information required herein, is subject to the Freedom of Information Act (FOIA) with personal or sensitive information that is subject to the Privacy Act redacted when released under FOIA.
Marine Mammal Transfer/Transport Notifications
NMFS recommends that:
1 1. Holders notify NMFS of proposed transfers/transports by completing a Marine Mammal Transfer/Transport Notification (MMTTN) form, forwarding it to the Receiver for signature and submitting it to NMFS. It is not necessary to submit the MMDS for the animals proposed to be transferred/transported, but sufficient information must be included on the MMTTN to identify the animal(s).
2 2. The MMTTN must be received by NMFS at least 15 days prior to the actual transfer/transport date. Should you need to transfer/transport an animal before the required 15 day notification, please contact NMFS regarding an emergency waiver.
3 3. NMFS will reply with an acknowledgement letter and MMDS(s) to be updated upon receipt of the animal(s). The transfer/transport should occur within 60 days after initial submission of the MMTTN. If an extension is necessary, please contact NMFS.
4 4. At any time within 30 days of the transfer/transport, the Holder should forward to NMFS the updated MMDS for each animal actually transferred/transported (i.e. Section I and, as necessary, Section III to verify receipt of the animal(s)).

Beached and Stranded Marine Mammals - Retention or Transport
The retention or transport/retention of rehabilitated beached and stranded marine mammals requires a permit or written authorization under the MMPA. A permit is required to obtain such marine mammals for purposes of scientific research or enhancing the survival or recovery of species or stocks, or to retain or obtain such marine mammals for public display purposes where such animals have been determined releasable. Where such marine mammals have been determined non-releasable, NMFS authorization is required to retain or obtain them for public display purposes. Pleas contact the Permits, Conservation and Education Division at the number or address below for information on submitting such a permit application or authorization request.
QUESTIONS? If you need assistance completing this form please contact the Permits Division at (301-427-8401) or write to us at:
Permits, Conservation and Education Division -F/PR1 Office of Protected Resources Or by facsimile National Marine Fisheries Service at (301) 713-0376 1315 East West Highway, Room 13705 Silver Spring, MD 20910
Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, search existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information to complete this form. Send comments regarding this burden estimate or any other aspect of this collection of information including suggestions for reducing this burden, to the Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Not withstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless the collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.



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www.sixflags.com

January 3, 2002

VIA FACSMILE

Ms. Ann Terbush, Chief
Permit Division
Office of Protected Resources
National Marine Fisheries Service
SSMC #3 1315 East-West Highway
Silver Spring, MD 20910

Dear Ms. Terbush,

This letter is to request copies of all comments during the public comment period related to Funtime, Inc.'s marine mammal import application.

The comments can be sent to G. William Hughes, c/o Six Flags Worlds of Adventure, 1060 N. Aurora Rd., Aurora, OH 44202. A copy of the comments can also be sent to Mr. James Gesualdi, Attorney at Law, 58 Wingam Drive, Islip, NY 11751-4112

Please charge my Federal Express account - #1194-1902-6 for the costs associated for mailing the comments to both parties listed. If it would get the comments to the both parties faster you may elect "Saturday" delivery on the Federal Express form.

Thank you for your time and anticipated prompt response.

Very truly yours,

G. William Hughes,
Zoological Director

Cc: Jennifer Skidmore

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

JAN 29 2002

G. William Hughes
Zoological Director
Funtime, Inc.
Six Flags Worlds of Adventure
1060 North Aurora Road
Aurora, OH 44202

Dear Mr. Hughes:

We received your request for copies of the comments submitted during the public comment period related to Funtime, Inc.'s marine mammal import application, File No. 1004-1656. We have enclosed the comments received by this office with regard to the above mentioned Federal Register notice. We will need additional information from you to respond to some of these comments. We will summarize the questions, and send them in a separate letter. Please contact Jennifer Skidmore or Amy Sloan at 301/713-2289 should you have any questions.

Sincerely,

Ann D. Terbush
Chief, Permits, Conservation
and Education Division
Office of Protected Resources

Enclosures

cc: James Gesualdi, Attorney at Law (with enclosures)

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